36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 189.

SWEENY, RITTENHOUSE, FANT & CO.

[To accompany Bill H. R. No. 427.]

MARCH 23, 1860.

Mr. TAYLOR, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of Messrs. Sweeny, Rittenhouse, Fant & Co., respectfully submit the following report:

Messrs. Sweeny, Rittenhouse, Fant & Co. set forth, in substance, in their memorial, that the Secretary of the Treasury, by authority of an act of Congress, entitled "An act to authorize a loan not exceeding the sum of twenty millions of dollars," approved June 14, 1858, gave notice through the public newspapers, on or about the 17th of December, 1858, that sealed proposals would be received by him for ten millions of stock of the United States to be issued under that act; that they, having carefully examined the terms and conditions of the printed notice, were induced thereby to tender proposals for $3,000,000 of the stock of the United States to be taken at a premium to be paid by them to the government of $2 89 on the $100; that the printed notice of the Secretary expressly declared that successful bidders, who were residents of the country, might deposit the amounts to be paid for the stock awarded to them in any depository of the United States nearest their residence, or at such other depository as their convenience might indicate; that they, the memorialists, were residents of this country, and, as such resident successful bidders, were entitled to pay the sums to be received by them at the depository nearest their residence, or, at their own option, into "such other depository of the United States as their convenience might indicate;" that immediately after their proposal had been accepted, in January last, the memorialists offered to deposit the whole amount to be paid for the stock awarded to them in the depository of the United States, at San Francisco, California; that the Secretary of the Treasury refused to permit them to do so, on the ground that they had no right, under the proposals, to make their deposit at that point, and required them to make their payments at other points not indicated by them; and that, in consequence of this conduct of the Secretary, they have been prevented from making large profits by not being allowed to furnish the money received from them

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in San Francisco, and have suffered considerable losses from being required to pay this money elsewhere. Upon this statement the memorialists allege that there has been a violation, to their injury, of the contract between themselves and the United States, which resulted from the acceptance of their proposal by the Secretary of the Treasury, and they now claim that the United States is justly bound, in consequence of this alleged violation of the contract with them, to make good the loss of the profits of which they assert they were improperly deprived, and to indemnify them for the actual losses sustained by them in the course of the various transactions on their part to which the contract gave rise.

The memorialists do not specify any particular and precise losses incurred by them in making sales of the stock which they received. They state generally that they were "forced to sell it at a great loss," "in fulfilling" their "contract, on terms never assented to by" them. The most of the details given by the memorialists to show the amount of compensation which they conceive themselves entitled from the government are connected with the loss of the profits which they say they would have made upon certain exchange operations if they had been allowed to deposit the three millions in California. The character and source of these profits are thus set forth in the memorial. The current rates of exchange between San Francisco and New York, in February and the early part of March, 1859, it is stated, "was an average of three per cent. premium;" and then the memorialists proceed to say: When we had deposited the money there (in San Francisco) we would have received from the treasury, or depositary of the United States at San Francisco, certificates of deposit, which would have entitled us to an issue of stock. On this certificate we could have raised the money in New York, and having funds there we could have authorized our agent at San Francisco to draw bills on us payable in New York. These bills would have commanded, at San Francisco, a premium of three per cent.; so that by this premium and the interest upon the money for the time necessary for the transmission of the drafts from San Francisco to New York "we should have realized, on the $3,000,000 taken by us, a profit of $100,000."

The question presented to the committee, then, is one of considerable importance from the pecuniary interests involved in it. But it is not the amount claimed which alone gives it importance; there are circumstances connected with the claim, and with the manner in which it is brought forward and prosecuted, which make it the imperative duty of the committee to give it their most serious consideration. The government is charged by the memorialists with a breach of faith, and its financial agent, the Secretary of the Treasury, is accused, in point of fact, of misconduct in the discharge of his duty. But this is not all. An impression is sought to be produced against the good faith of the government and the fairness of the public functionary at the head of the Treasury Department by partisan allusions to the case through the public newspapers; and the memorialists themselves have presented to the committee a copy of a private letter to them from a commercial firm of some reputation, on the subject of this very claim, with a view, it is to be presumed, of influencing their

action. In this letter the writers, speaking of the claim of the memorialists, say, "we deem your position as clearly correct, and your rights as unquestionable;" and then, after referring to a transaction of their own with the Treasury Department, in which they had proposed for a portion of the same loan, to make a deposit at San Francisco, and had been refused permission to do so, they proceed to declare that "this gave such a shock to our confidence as to the good faith and management of the department, that we determined to at once rid ourselves of the stock; and making good the payments in *New York*, as *demanded*, (instead of San Francisco, from which we had to remit our funds,) we disposed of the stock without delay, and at a considerable loss;" and finally conclude by observing that "we know of no temptation now that would induce *us* to bid on a treasury loan; for when plain English language is made to mean nothing, and plain contracts hold nothing except on one side, there is neither satisfaction nor security in business."

The dispensation of justice to private claimants is of perpetual obligation on the part of every government, which, from being clothed with all the attributes of sovereignty, is exempted from judicial pursuit. But justice is as much due to the government, and to the officials who are intrusted with the administration of its affairs, as to private individuals, and it is of public concern that undeserved censure should not be allowed to attach to the acts or character of public officers who have been faithful in the performance of the duties confided to them. And now, keeping both of these principles in view, your committee will proceed to call the attention of the House to the whole case before them.

For the proper decision of this case it is necessary to look beyond the facts specially set forth by the memorialists. There are certain public facts resulting from law and from the ordinary course of the administration of the Treasury Department which necessarily enter into it, and must be taken into consideration before the true character, extent, and conditions of the contract between the government and the memorialists can be known, and we are in a position to determine whether there has or has not been a violation of it. The operations of the treasury of the United States are public concerns, and are known to all the world. The treasury of the United States is by law established in the rooms provided for that purpose in the Treasury building in the city of Washington. The Secretary of the Treasury resides here. At this point all the public revenues and expenditures are provided for and regulated. The accounts of the receipts and disbursements are here kept. The moneys belonging to the government, whether derived from the ordinary sources of revenue or from loans, are here placed to its credit; and it is here, also, that it is debited with its payments. The treasury of the United States in the city of Washington is the centre of all the fiscal transactions of the nation; and, in the eye of the law, whatever money is received for it, no matter where received, is transmitted there; and whatever money is paid out, no matter where the payments are made, are effected by transfers made from it.

But whilst this is true to the letter, it must not be forgotten that

these transfers are not, in practice, made by the actual transportation of coin in all or even in any considerable proportion of cases. The Treasury Department avails itself, in the public interest, of all those commercial inventions for the transfer of funds without expense, by exchanges of credits, which have distinguished the progress of trade in modern times; and in some instances it takes advantage of the general course of trade to make a profit for the government by making its operations subsidiary to the convenience of the mercantile world. This last feature in the operations of the Treasury Department of the United States has been particularly illustrated in its management with respect to the expenditures on the Pacific coast. It is known to all that the mining of gold is the staple industry of California, and that that precious metal is her principal article of export from the Pacific to the Atlantic coast. The expense incurred in its transportation for freight, insurance, &c., is very considerable, and, in consequence, exchange on New York always rules high at San Francisco. Ever since the acquisition of California the expenditures of the United States on the Pacific coast have largely exceeded the revenues collected there, and the government has been required to transfer considerable sums of money from its depositories on the Atlantic coast to the points of immediate disbursement on the Pacific.

In doing this, it was not necessary to move any coin. The greater value of money in New York than in San Francisco made it at once apparent that the government could at any time effect an exchange of its coin in New York for coin in San Francisco, and that, instead of incurring an expense, it could make a profit on the transfer. Your committee are not informed of all the transactions of the government of this character, but they have ascertained, by inquiry at the Treasury Department, that transfer drafts for that purpose issued by the Treasury Department amounted in 1856 to $2,000,000; in 1857, to $1,200,000; in 1858, to $2,600,000; and in 1859, to $2,200,000; and that the treasury received a premium of $2\frac{1}{4}$ per cent. in the transfers of 1856, 1857, and 1858, and of $2\frac{30}{100}$ths on the transfer of 1859. From these facts it is at once seen that the government realized the following profits in 1856, 1857, and 1858, in transferring its funds from the treasury of the United States to California to provide for the expenditures there, viz: $45,000 in 1856, $27,000 in 1857, and $58,560 in 1858; and that it would also necessarily make a profit of at least $50,000 upon the transfer it was required to make in 1859, if that transfer was effected in the usual manner. It was the established practice of the government to provide for the public expenditures of the United States on the Pacific coast, over and above the amount of the revenues received there, in the manner just spoken of, and on the terms just mentioned, where the transactions which gave rise to the claim under consideration took place; and this fact must not be lost sight of in looking at the various features of those transactions.

The memorialists and their counsel, who have prepared elaborate arguments to sustain their claim, seem to consider that it is only necessary to look at the notice issued from the Treasury Department on the 17th of December, 1858, and to the acceptance of the proposals of the memorialists by the Secretary of the Treasury, before deci-

ding their case. But this is not so. It is not the Secretary of the Treasury, but the United States, with whom the memorialists contracted. The Secretary was the mere mandatary of the government, and his acts could bind it only when done within the scope of his powers. And what were his powers? They are to be found in the act entitled "An act to authorize a loan not exceeding the sum of twenty millions of dollars," approved June 14, 1858. This act necessarily made a part of the contract. The notice in question from the Treasury Department, dated on the 17th of December, 1858, was issued in conformity to its provisions to carry the act into effect, and it is expressly stated in that notice that the stock for which bids were called for was "to be issued under" it. It is requisite, therefore, to look to the act in order to determine what the Secretary was authorized to do. On doing this, we find, first, that he was authorized, with the consent of the President, to cause certificates of stock to be prepared in a certain manner; second, that before awarding the loan he was to call for sealed proposals for it, by public notice in the newspapers, which notice should state, among other things, *the places where the money* loaned should be paid; and, third, that when the proposals were opened they should be decided on by the Secretary of the Treasury, who was expressly required by the act "to accept the most favorable proposals offered by responsible bidders," &c. There was no discretion vested in the Secretary. The act was imperative; it declared he "shall accept the most favorable proposals."

It was the intention of Congress, as shown by the act, to obtain the money to be raised for the public service by loan, at the smallest expense practicable. The interest on the stock to be issued was not to exceed five per cent., but the President was at liberty to have them bear a less rate if lenders were willing to supply the money required for less. It was also in the contemplation of Congress that such a premium should be realized on the stock to be issued as the state of the money market would justify, and for that purpose declared that no stock should "be disposed of at less than its par value," and provided for the publication of a notice calling upon capitalists for proposals for the loan with the view of awarding it to those whose terms were the most advantageous to the government. In order to determine what proposals would be the "most favorable" to the United States, it was necessary, as is obvious to all who are acquainted with the differences in the value of the constitutional currency of the government at different points, as indicated by the rates of exchange between them, that the point at which any particular bidder for the loan was to furnish the money to be paid by him should be known. Indeed, this fact was considered so important by Congress that it specially provided for its being known, by directing the Secretary of the Treasury to state, among other things, in the notice calling for proposals, which he was to publish, the places where the money was to be paid.

From the very language of the act under which the transaction was had, it is, then, evident that the place where the amount loaned was to be paid was required to be known before there could be any action on the part of the Secretary for the awarding of the loans among the

competing bidders. Before the Secretary could decide between two bids offering the same premium, and say which was the more favorable to the government, it was absolutely necessary that he should know where each bidder proposed to pay. This will be illustrated by taking the case of two bidders at the date of this transaction, one living in New York and the other living in San Francisco. Let us suppose they both offered a premium of two per cent. for $3,000,000, the amount bid for by the memorialists. Now, if one was to furnish the money in New York and the other in San Francisco, the bids, though identical in the amount of premium offered, would, in point of fact, be monstrously unequal; and the inequality, so far as to their favorableness to the United States, would be greater or less in proportion as the government required the money for its expenditures on the Atlantic or the Pacific coast. If the amount to be received was to be expended on the Atlantic coast, the government, by accepting the bid where the payment was to be made in New York, would have realized a profit of two per cent. on the principal of the stock issued; whilst, by accepting the bid payable in San Francisco, it would have lost at least one per cent. on the principal of the bonds, since, though it received the two per cent. premium, it would have cost it three per cent. to transfer the amount paid there from San Francisco to New York. So that in the latter instance, though the stock issued nominally brought a premium, it would in reality have been disposed of at one per cent. below par, in violation of an express prohibition contained in the act. In the case supposed, to make the two bids equally favorable to the United States, the premium offered by the San Francisco bidder should have been five per cent., whilst the New York bidder only gave two.

If, on the other hand, the amount, or a portion of the amount, to be received was for expenditures on the Pacific coast, then the real inequality of the same premium on the two bids would have been still almost as great, so far as the public interest was concerned; for as the government was then exchanging its transfer drafts on depositaries of the United States upon the Atlantic coast for coin in San Francisco at a premium of two and a quarter per cent., the bid of two per cent. premium for the stock, payable at New York, would have been in truth equal to a bid of four and a quarter per cent. for the same stock payable at San Francisco.

From what has been said, your committee think it is abundantly clear that the place where the amount proposed to be given for the bonds was to be paid, constituted not only a material but a necessary part of the contracts the government designed entering into with the bidders for stock under the act of June 14, 1858, and that no bid which did not indicate such place of payment could have been properly considered by the Secretary of the Treasury, and become the basis of a contract with the government. The memorialists, however, insist that the notice published by the Secretary for sealed proposals for the loan gave them the right to choose the place where they would make the payments required of them after the acceptance of their bid. It is hardly necessary to say that on principle there could be no foundation for such a pretension, if the notice was of the character they

describe, since it was the act, and not the notice which referred to it and was issued under it, that controlled in making the contract. Your committee, however, believe that the pretensions of the memorialists can find no support whatever in the language of the notice in question.

The only portion of that notice, as published among the exhibits accompanying the memorial, and marked A, which has any connection or bearing on the case before us, is in the following words: "The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient to him. Should bids be accepted from parties not residing in the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans." And what was the plain meaning and import of this language? It informed all who intended to bid for the stock that payments for it could be made, first, by a resident of the United States at the depository nearest to his residence, or in the one "indicated as most convenient by him;" and, second, by non-residents, at the depositories in New York, Boston, Philadelphia, or New Orleans. This was information given to the public for their guidance in making bids. The foreign bidder was required to make his payments in one of the four great depositories of the United States, but was at liberty to make selection of either. The domestic bidder was required to make his payments in the depository nearest his residence, or to indicate another as most convenient to him. Here was a distinct option given to both classes of bidders; and the question arises, when was that option to have been exercised? Certainly at the time of making the bid. In the absence of any express selection by the foreign bidder, the depository in which the preliminary deposit of one per cent. was made when making his bid would, from necessity, be reputed the one selected by him. And the same principle would apply to the domestic bidder. If it were not his purpose to make his payment at the depository nearest his residence, and in which he made the preliminary deposit of one per cent. on the amount of stock bid for, it would be his duty to indicate a different place before his bid was acted on.

As we have before said, the favorableness or unfavorableness to the United States of the competing bids for the stock to be issued under the act of 1858 depended as much upon the place where the payments were to be made by the bidders as upon the amount of the premiums offered. Until the place where the payment was to be made was known, no valid or binding acceptance of any bid could have been made by the Secretary. In the present instance the bidders resided in the city of Washington. They had made the preliminary deposit of one per cent. required to accompany a bid at that place, and had not indicated any other. In the absence of any "indication" to the contrary in the bid itself, it was an undoubted presumption of law that the money to be paid by them for any stock to which they might become entitled by the award of the Secretary of the Treasury was to be paid here, and not elsewhere. If it were the intention of the memorialists, when they made the bid, to make the payment under it at

San Francisco, the concealment of the intention would have been regarded both in law and equity as a breach of good faith, and would have had the effect of vitiating the transaction in such a manner that whatever might have been the rights of the United States under it, they at least could have derived none from it.

The application of this principle shows at once the fallacy of the statement made in the memorial as to the right of a bidder residing in California to make his deposit there under his bid, and of the unsoundness of the argument drawn from it by the memorialists and their counsel. It is true, a bidder residing in San Francisco would have had a right to make his deposit there; but it is also true that the Secretary of the Treasury would have been required, in the discharge of his official duty, to take that fact into consideration in deciding which bids were "the most favorable" to the United States. And then what would have been the result? Why, as money on the Atlantic coast was worth from two and a quarter to three per cent. more than in California, no bid, when the deposit for it was to have been made thus, could have been accepted by the Secretary without a violation of duty, unless the premium offered by the bidder there exceeded that of the competing bids on the Atlantic coast by from two and a quarter to three per cent. In this way the capital and capitalists of all parts of the United States stand upon a perfect equality when they enter into a competition with each other for government loans; but it would be otherwise if the bids were to be awarded upon the nominal amount of the premiums offered, and without reference to the places where the amounts to be furnished under them were payable. If this were so, then those having money in California would have a complete monopoly of all such transactions, inasmuch as in the present state of the money markets of the United States, under the operation of the great laws of trade, money is cheaper in California than in the Atlantic States; and at the same rates of premium, bids payable there would give a profit of from two to three per cent. on the nominal amount of the stocks issued to them over those payable elsewhere.

Under all the circumstances of this case, then, your committee are of opinion that the conduct of the Secretary of the Treasury in refusing to permit the memorialists to deposit in San Francisco the amount of their bid for three millions of stock of the United States, as called for by the notice from the Treasury Department dated December 17, 1858, was in strict conformity with his official duty; that in refusing to permit them to do so no contract, express or implied, between the memorialists and the United States was violated, and that there is not a shadow of foundation for any claim upon the United States on the part of the memorialists for the damages claimed by them as growing out of the transactions connected with the bid.

Your committee might, perhaps, here close their report with a simple recommendation that the claim of the memorialists be rejected; but they cannot shut their eyes to some of the facts which have forced themselves on their notice during the examination of the case before them. The memorialists seem to have labored under some great misapprehension when they made their bid for three millions. What that misapprehension was, it certainly had the effect of engaging them

in an enterprise which they were unable to carry out, and which has entailed on them a serious loss. A portion of the stock bid for by them, exceeding a million of dollars, was not issued to them because they had not the funds to pay for it, and has since been disposed of by the Secretary of the Treasury to others. Upon this portion of the stock bid for and not received by them, as well as upon the portion received, they made the preliminary deposit of one per cent. on making the bid. This deposit, amounting to $10,000 or $12,000, is now in the treasury of the United States, and will be a dead loss to the memorialists if Congress does not come to their aid. We think Congress ought to do so. Though the memorialists have preferred what we believe to be an unfounded claim against the government, and have indulged in many rather extravagant representations in making it, we do not believe they intended anything wrong at any time. They have been deceived, as other men have been before, by hope, who told them "a flattering tale," and got them into difficulty. And since that time, in struggling to get out, they have persuaded themselves, as other men have done before, that they have been wronged by some one—the government, the Secretary, no matter who, rather than by themselves or fortune. Now, though this is not so, and they have in truth suffered no wrong from the government or the Secretary, yet, as there can be no propriety in the government being benefited by the memorialists' misfortunes, we think it right to recommend that their preliminary deposit for stock not obtained by them shall be returned, and therefore report a bill accordingly.

TREASURY DEPARTMENT, *February* 28, 1860.

SIR: I have the honor to acknowledge your letter of the 26th instant, and beg leave to reply to your inquiries in their order.

1. "How many offers were made under the notice of December 17, 1858, for the loan? Give me, if you please, the names of those making offers, the amount respectively of each offer, the rate of premium offered, when the deposit under each offer of 1 per cent. was made, and anything besides of a special character in regard to each bid."

In answer, I have the honor to enclose herewith a transcript of the offers under that notice as opened and announced on the 24th of January, 1859. In all those cases the preliminary deposit of 1 per cent. on the amount offered had been made subject to the order of the Secretary of the Treasury, and the evidence of that fact accompanied the bid, to entitle it to be considered by the terms of the notice. This transcript is marked A. The bid of W. F. Coleman & Co. was of a special character, as will be seen by the accompanying copy, marked B. Explanation was called for by letter, marked C, which was given by their letter, marked D, upon receipt of which their bid was accepted by my letter, marked E. It will be seen that I expressly avoided any discussion upon deposits at San Francisco, being satisfied that they could not be made within the time prescribed by the notice, and having invariably refused to extend the time to enable deposits to be made there.

2. "What is the average amount of money required by the United

States to be transferred from the Atlantic side to the Pacific coast each year to provide for the government expenditures there; and what is the mode in which these transfers have been effected; and what has been the cost to the government of making such transfers; and what has been the premium received?"

In reply, I beg leave to state that the Treasurer's books show that the amount of transfers of money in the treasury from depositories on the Atlantic to that at San Francisco has averaged somewhat more than two millions a year during the last four years. The transfer drafts issued for that purpose in 1856 amounted to $2,000,000; in 1857, to $1,200,000; in 1858, to $2,600,000; and in 1859, to $2,200,000.

The mode of making transfers of money in the treasury from depositories where it was not immediately wanted for the public service to those where it was needed, was established soon after the organization of this department. Transfer drafts are issued by the Treasurer, sanctioned by the signature and authority of the Secretary of the Treasury, upon the depository whence the money is to be drawn, in favor of the depository to which it is to be carried. Whenever it has been estimated here that the public service on the Pacific coast would require any considerable amount beyond the revenue there, the Treasurer has been directed to issue transfer drafts for the amounts so required in favor of the assistant treasurer at San Francisco, upon a depositary on the Atlantic coast—usually either the assistant treasurer at New York or Boston. These transfer drafts being transmitted to the assistant treasurer at San Francisco by mail, he would there exchange them for cash, and enter the amount received for them on his books. The holders of such drafts would present them at the depository on which they were drawn, who, on paying the amount in coin, would charge the same on his books, the amount in the treasury not being changed by such transfers, but only its locality of deposit altered.

When it became evident that continual transfers of money in the treasury from the Atlantic to the Pacific coast would be necessary to carry on the public service, it being understood that funds in New York commanded a premium at San Francisco, my immediate predecessor notified various parties engaged in transactions with California, that transfer drafts for a considerable amount upon New York were being sent to San Francisco, and invited offers for the privilege of exchanging cash there for such drafts on New York, to such amount as might be required for one year. The offer of the highest rate of premium for such privilege was accepted, and the assistant treasurer at San Francisco placed under standing orders to negotiate the transfer drafts sent him only with such party on payment of the stipulated premium with the principal, on which he is to endorse the transfer drafts accordingly.

From year to year, since that time, proposals for this privilege have been received from various parties, and awarded to the best offer. For the years 1856, 1857, and 1858, Messrs. Howland & Aspinwall were the highest bidders at the premium of $2\frac{1}{4}$ per cent. For 1859 Messrs. Wells, Fargo & Co. were the best bidders at the premium of $2\frac{30}{100}$ per cent.

3. "Was there any other case besides that of Howland & Aspinwall in which the department rejected offers to have money deposited in San Francisco to fulfil the offer of loaning to the United States?"

In reply to this inquiry, I beg leave to say that no decision to that effect has been made by this department except in that case. Various inquiries have been made, both verbally and in writing, on this subject from time to time; and the general reply, in substance, has been, that the department did not need that money be deposited in San Francisco on account of the loan, and must decline giving any facilities in making such deposits there. In the case of Messrs. W. T. Coleman & Co., the correspondence with whom is herewith transmitted, they announced their determination to make their deposit on account of their bid at San Francisco. The department declined any discussion on the subject for the reason before stated, but left them to adopt such course as they deemed best for their interests. The result was, that before the expiration of the time prescribed in the notice, they deposited the principal and premium of their bid with the assistant treasurer in New York, and made no attempt to comply with the terms of the notice at San Francisco.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. MILES TAYLOR,
House of Representatives.

A.

List of bids for loan, opened January 24, 1859.

Names of bidders.	Residence.	Am't desired.	Rate of premium.
			Per cent.
A. & M. Tuska	New York	$5,000	5
		5,000	5.01
		5,000	5.02
		5,000	5.03
Hudson River Bank	Hudson, N. Y	8,000	2¾
		8,000	3
		8,000	3¼
Thompson Brothers	New York	500,000	.15
		200,000	.55
		100,000	1.15
		100,000	1.55
		100,000	2.15
Ætna Insurance Company	Hartford, Conn	25,000	2½
		25,000	2¾
		25,000	3
		25,000	3¼
B. Berend & Co	New York	100,000	2½
		200,000	2¼
		300,000	2
M. Morgan & Son	——do	50,000	2.56
		50,000	2.46
		50,000	2.36
		50,000	2.26
		50,000	2.16
		50,000	2.06
		100,000	1.96
		100,000	1.86
		100,000	1.76
		200,000	1.66
		200,000	1.56
New Haven Bank	New Haven, Conn	15,000	.52½
		15,000	.27½
Cronise & Co	Philadelphia	150,000	1.13
		100,000	1.43
		50,000	1.78
		50,000	2.09
		50,000	2.18
		25,000	2.25
		25,000	2.33
		25,000	2.45
		25,000	2.59
Benjamin H. Field	New York	25,000	3½
		25,000	3
		10,000	2
		20,000	1
		20,000	½
United States Trust Company	——do	50,000	1.87
		75,000	1.77
		75,000	1.57
		100,000	1.47

A—Continued.

Names of bidders.	Residence.	Am't desired.	Rate of premium.
			Per cent.
Ward & Co	New York	$25,000	1¾
		200,000	2
		50,000	2¼
		25,000	2½
E. Whitehouse, Son & Morrison	do	50,000	1.65
		50,000	1.75
		50,000	1.85
		50,000	1.95
		50,000	2.05
		50,000	2.15
		50,000	2.25
		50,000	2.30
		50,000	2.35
		50,000	2.40
W. Hoge & Co	do	100,000	2.02
		100,000	1.92
		100,000	1.87
		100,000	1.72
		100,000	1.62
Sweeny, Rittenhouse, Fant & Co	Washington	3,000,000	2.89
Bank of New York	New York	100,000	1.55
		100,000	2.05
		200,000	2.55
J. J. Searing	do	10,000	1.26
Searing & Brothers	Newark, N. J	10,000	1
Trevor & Colgate	New York	50,000	2.47
		50,000	2.27
		200,000	2.07
		210,000	½
A. E. Silliman	do	50,000	2
		50,000	2¼
		50,000	2½
East River Savings Institute	do	50,000	2¼
		50,000	2½
		100,000	2¾
W. F. Faege	do	40,000	1.01
		40,000	1.11
		40,000	1.21
		40,000	1.31
		40,000	1.41
		40,000	1.51
		40,000	1.61
		40,000	1.71
		40,000	1.81
		40,000	1.91
		25,000	2.01
		25,000	2.06
		25,000	2.11
		25,000	2.16
		25,000	2.21
		25,000	2.26
		25,000	2.31
		25,000	2.36

A—Continued.

Names of bidders.	Residence.	Am't desired.	Rate of premium.
			Per cent.
W. F. Faege—Continued	New York	$25,000	2.41
		25,000	2.46
		25,000	2.51
		25,000	2.56
		10,000	2.61
		10,000	2.66
		10,000	2.71
		10,000	2.76
		10,000	2.81
		25,000	3.01
Seamen's Bank of Saving	do	50,000	Par.
		50,000	¼
		50,000	½
		100,000	¾
		100,000	1
		50,000	1¼
		50,000	1½
		50,000	1¾
H. Meigs, jr., & Smith	do	100,000	1.03
		50,000	1.53
		50,000	2.03
McKim & Co	Baltimore	150,000	½
		100,000	1
William T. Coleman & Co	New York	20,000	3¼
		20,000	3
		20,000	2½
		20,000	1½
		20,000	1
Clark, Dodge & Co	do	200,000	2.06
		200,000	2.27
		100,000	2.52
R. W. Montgomery	do	20,000	3
		20,000	3.15
		20,000	3.20
A. Nicholas	do	10,000	2
		10,000	2½
		10,000	1½
National Bank	do	100,000	3¼
Philadelphia Saving Fund Society	Philadelphia	150,000	3
Bank of the Metropolis	Washington	100,000	2.01
		100,000	2.25
		100,000	2.51
		100,000	3.01
Theo. Dehon	New York	50,000	2.85
		50,000	2.05
Wm. Gay, cashier	Troy, N. Y	10,000	2.87
		10,000	3.01
Manufacturers' Bank	do	10,000	Par.
		5,000	.10
		5,000	.15
		5,000	.20
		5,000	.25
		5,000	.30

A—Continued.

Names of bidders.	Residence.	Am't desired.	Rate of premium.
			Per cent.
Manufacturers' Bank—Continued	Troy, New York	$5.000	.50
		5,000	.75
		5,000	1
Howland & Aspinwall	New York	150,000	2.21
		150,000	2.41
		100,000	2.61
		50,000	2.81
		50,000	3.01
		25,000	3.06
		25,000	3.11
		25,000	3.16
		25,000	3.21
Von Baur & Co	do	100,000	1.01
		100,000	1.09
		100,000	1.15
Bank of Washington	North Carolina	50,000	4
New Haven Bank	Connecticut	10,000	.65
		10,000	.70
		10,000	.77
F. M. Ketchum & Bros	New York	40,000	1¾
		20,000	2
		20,000	2¼
Ketchum, Howe & Co	do	200,000	Par.
		150,000	1½
		150,000	2
Home Insurance Co	do	200,000	Par.
		100,000	½
		50,000	¾
		50,000	1
Marie & Kautz, (C)	do	100,000	1.14
		20,000	1.29
		20,000	1.16
		20,000	1.42
		20,000	1.55
		20,000	1.68
		20,000	1.81
		20,000	1.94
		20,000	2.07
		20,000	2.20
		20,000	2.33
		20,000	2.46
		20,000	2.59
Marie & Kautz, (A)	do	20,000	1.16
		20,000	1.29
		20,000	1.42
		20,000	1.55
		20,000	1.68
		20,000	1.81
		20,000	1.94
		20,000	2.07
		20,000	2.20
		20,000	2.33
		20,000	2.46

A—Continued.

Names of bidders.	Residence.	Am't desired.	Rate of premium.
			Per cent.
Marie & Kautz, (A)—Continued	New York	$20,000	2.59
Marie & Kautz, (D*)	do	25,000	3
Marie & Kautz, (E)	do	10,000	1.81
		10,000	2.07
		10,000	2.20
		10,000	2.33
		10,000	2.51
		10,000	2.60
Marie & Kautz, (B†)	do		
Rollins Bros	do	10,000	2.05
		10,000	2.30
		5,000	2.55
Francis Leland	do	25,000	2
Al. Brown & Sons	Baltimore	100,000	2.01
R. J. Nevin	Washington	300,000	1½
Riggs & Co	do	1,830,000	.57
		1,840,000	.76
		1,830,000	1
Lockwood & Co	New York	400,000	2.11
		350,000	2.39
		250,000	2.52
		250,000	2.64
		150,000	2.77
		50,000	2.89
		50,000	3.02
Clarke, Dodge & Co	do	100,000	2.10
R. J. Nevin	Washington	200,000	2
		300,000	3

* Same bid as A in the additional bid of $25,000. † Same as bid A.

B.

WM. T. COLEMAN & Co.,
SAN FRANCISCO, CALIFORNIA, AND NEW YORK.,
Office 88 *Wall Street, New York, January* 22, 1859.

SIR: The undersigned beg to offer the following bids for a portion of the government stock loan of 1858. Cost of same, if our bids should be successful, to be paid at the depository of the United States at San Francisco, California, by Messrs. Wm. T. Coleman & Co., residents there, viz:

$20,000—Twenty thousand dollars, at one hundred and three and one-quarter per cent. premium, (103¼.)
$20,000—Twenty thousand dollars, at one hundred and three per cent. premium, (103.)
$20,000—Twenty thousand dollars, at one hundred and two and one-half per cent. premium, (101½.)
$20,000—Twenty thousand dollars, at one hundred and one and one-half per cent. premium, (101½.)
$20,000—Twenty thousand dollars, at one hundred and one per cent. premium, (101.)

We beg to enclose you the assistant treasurer's receipt for one thousand dollars, ($1,000,) being for one per cent. on amount of our bids for $100,000, and remain,

Very respectfully, your obedient servants,
WM. T. COLEMAN & CO.

Hon. HOWELL COBB,
Secretary of the Treasury, Washington, D. C.

C.

TREASURY DEPARTMENT, *January* 26, 1859.

GENTLEMEN: By the terms of your offer for the loan, you propose, if needful, to pay the amount at the depository at San Francisco. If this is regarded as a condition, the bid cannot be received.

Various parties had previously applied for information, and were informed that no such condition could be recognized, as the department could not sanction any expectation or understanding not contained in the public notice of the 17th ultimo.

I will thank you to state, by return mail, whether you regard your bid as absolute, and you undertake to define the principal and premium as required by the notice, or whether the bid is subject to the condition of making the deposit at San Francisco.

Very respectfully, your obedient servant,
HOWELL COBB,
Secretary of the Treasury.

Messrs. W. T. COLEMAN & Co.,
No. 88 *Wall Street, New York.*

D.

NEW YORK, *January* 27, 1859.

DEAR SIR: We have your esteemed favor of the 26th instant, and beg to say that in making our offer for a part of the treasury loan, we were not aware of any requisites having been made to the department as to payments in San Francisco, and for ourselves bid what we considered the plain provisions of your circular, and asked no right or privilege not covered or specified in your public notice of the 17th ultimo. We considered our bid as *entirely unconditional*, and do so consider it; and, in indicating where we would prefer making the payment, merely followed your advertisement, which says: "The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, *or* indicated as most convenient by him."

Now, San Francisco *is* our residence, and our house is there, our funds are there, and, as there is a depository of the United States also there, we desire there to pay any amount to which we may be entitled by the premium we offer. We beg to assure you we cannot see why we, as citizens of California, are to be prejudiced in this more than a resident of New Orleans or St. Louis, and we think on reconsideration you will agree with us in being entitled, *without question*, to pay in San Francisco the $60,000 on which we bid a premium of 2½ per cent. and upwards.

We are willing to receive our *stock* in San Francisco or New York as *you* may prefer; if *there*, the matter will be closed on our paying the assistant treasurer and receiving the stock of him; if *here*, we presume we merely receive his certificate of payment, and the stock will be issued upon same. Have the kindness to advise us at your *earliest convenience* if this meets your approval, as we desire to have *definite advices* go forward at once if possible.

If you should, to our disappointment, decline to receive our payments at San Francisco as the depository we indicate, you, of course, force us to abandon our bid, as our funds are there awaiting the necessary advices, and we do not intend making payment elsewhere.

Awaiting your favor, we remain, dear sir, your obedient servants,

WM. T. COLEMAN & CO.

Hon. HOWELL COBB,
Secretary of the Treasury, Washington, D. C.

E.

TREASURY DEPARTMENT, *February* 1, 1859.

GENTLEMEN: Your offer, under the official notice of the 17th of December, of $20,000 at the premium of 3¼ per cent., $20,000 at the at the premium of 3 per cent., $20,000 at the premium of 2½ per cent., is accepted.

The certificate of preliminary deposit is held awaiting advice of deposit of principal and premium, as required by the notice.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Messrs. W. T. COLEMAN & Co.,
No. 88 *Wall Street, New York.*

To the honorable Senate and House of Representatives of the United States in Congress assembled:

The memorial of Sweeny, Rittenhouse, Fant & Co., of Washington city, District of Columbia, respectfully showeth to your honorable bodies:

1st. That the Secretary of the Treasury, by virtue of an act of Congress passed on the 14th day of June, 1858, advertised on the 17th December, 1858, in the public newspapers of this city, (a copy of which is hereto annexed and marked A,) for sealed proposals for a loan of ten millions of dollars, being the balance of the sum authorized to be borrowed by that act; that your memorialists, having carefully examined the terms and conditions of such printed advertisement, were induced thereby to tender proposals for a part of the loan thus offered by the government; that they offered to lend three millions of the amount, and take the stock to be issued therefor at a premium to the government of $2 89 on the $100, and in order to comply with the terms of such printed proposals, they deposited in the treasury one per cent. of the amount; that, being the highest bidders for a part thereof, the sum of $3,000,000 of the stock was awarded to them by the Secretary on the 25th January, 1859; that the printed proposals of the Secretary of the Treasury, which had been published throughout the country, expressly declared that successful bidders, who were residents of this country, might deposit their amounts at any depository of the United States nearest to their residence, or at such other depository as their *convenience might indicate*, whereas the non-resident bidders were required to deposit at Boston, New York, New Orleans, or Philadelphia.

2d. Your memorialists aver that they were at the time when the loan was awarded to them, and still are, residents of this country, and as such resident successful bidders were entitled to deposit their amounts at the depository nearest to their residence, or at such other depository of the United States as their convenience might indicate. Such being the condition of their contract with the government, and which was the only consideration which induced them to bid for the loan, your memorialists offered, immediately after their bid was accepted, in January last, by Mr. Fant, one of their firm, to deposit the whole amount that had been awarded to them in the depository of the United States at San Francisco California.

3d. The Secretary of the Treasury, to their utter astonishment,

objected to receive the deposit there, having already decided that the successful bidders had no right, under the proposals, to make their deposits at that point. Your memorialists were much amazed at hearing of this decision; they had been entirely ignorant of its existence when they made the bid, and were governed by the printed proposals of the Secretary, as securing to them the right to deposit there. Indeed, this proposal constituted alone the terms of their contract with the government, and they deny that the Secretary had any right to repudiate the terms of their contract, or to alter, modify, or annul any of its provisions. The terms were free from all ambiguity. They authorized us, as successful resident bidders, to select the place of deposit where our convenience might indicate. That was the advantage given by the proposals to the resident over the non-resident bidders, which the decision of the Secretary entirely destroyed. This decision of the Secretary not only produced this change, but it directly altered the whole contract, inasmuch as it required the deposit to be made at such place as the Secretary of the Treasury might direct, and not where our convenience might indicate. The decision of the Secretary thus changed all the terms of the contract, by depriving us, as successful bidders, of the right to select the depository. It reversed the rights of the parties by constituting the Secretary the indicator of the place, and not the successful bidder, and actually excluded California, by the decision, as a State in this Union. The words of the proposals of the Secretary are: "The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him. Should bids be accepted from parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans." The place of deposit was clearly made a material part of the contract, and the "resident bidder," if successful, was explicitly authorized to select any government depository "nearest to his residence, or indicated as most convenient by *him.*" Now, if the Secretary can exclude us from the right to deposit in California, he might deprive a California bidder of the same privilege; and if he can exclude a depository in California, he may exclude a depository in any other State, and thus give the Secretary, instead of the *bidder*, the right to select at his option any public depository in which the deposit must be made. This is a change of the contract in a most vital point, and such as the Secretary has no right to make. And here permit us to remark that any small gain to the treasury which might accrue from this manifest violation of our contract, would, as a mere question of money, be far more than counterbalanced by the loss to which the government would necessarily be subjected in all future loans by an apprehended departure from the terms of the contract, whilst the still greater injury would accrue by subjecting the United States to the just imputation of violating their faith, and repudiating their contracts with bidders for the public loans. Your memorialists insist that when they made the offer to deposit at San Francisco it was made in good faith, and that the amount of their loan could have been placed to the credit of the government at that point by the day

required by the printed proposals had we not have been prevented by this refusal of the Secretary, as will be seen by reference to the letter of Duncan, Sherman & Co., marked B.

4th. Your memorialists insist that these terms gave ample time to deposit the money at San Francisco, and that the Secretary had no right to assume the province of deciding on the practicability of its being made in time, or for any other reason, and thereby deny the right of your memorialists to deposit there at all. Your memorialists had fulfilled their part of the contract by having paid into the treasury thirty thousand dollars to secure the government against all loss by any default in its execution, and the Secretary had no other right than to forfeit that sum were the deposit not made by us at San Francisco on the day specified in his proposals. Having been by this decision of the Secretary prevented from depositing the money in the depository at San Francisco, in violation of his proposals, we were at a loss how to proceed or what measure to adopt. We remonstrated, however, against this decision as a violation of our rights, and as contrary to the express terms of the contract, which remonstrance will be fully established by the Assistant Secretary of the Treasury. Had we acted up to the contract, in defiance of this decision of the Secretary, and deposited the money at San Francisco, it was apparent to us that he would have claimed the $30,000 we had deposited into the treasury as forfeited to the government; and, besides, our loss would have been immense had the Secretary refused to issue to us the United States stock on the certificate of deposit issued by the assistant treasurer at San Francisco. We were thus, by this decision of the Secretary, placed in a state of duress, unable to assert our rights under the contract or to resist this unjust decision.

5th. Thus situated, with so large a sum at stake, and subject to the Secretary's control, we determined patiently to forbear under this violation of our rights, and to seek of your honorable bodies ultimate relief for the losses we sustained by that decision. We continued, however, to assert our right to do so.

6th. On the 29th of January, 1859, a few days after this decision had been announced to us by the Secretary, we supposed that the government would require funds to pay off the troops stationed on the Pacific, and again applied to the Secretary to suffer us to deposit the amount that might be so required at that place. This offer was also rejected, as will appear by the letter of the Secretary marked C. Supposing that the Secretary of the Treasury had not been officially informed what amount would be required for the disbursements to the troops on the Pacific, we addressed a letter to the Secretary of War, setting forth our rights under the contract, and requested him to state to the Secretary of the Treasury the amount his department would require at that point, so that we might be permitted to deposit at least the sum demanded for the use of the War Department. The Secretary of the Treasury again refused to receive even this amount at that place, for the reasons assigned in the letter of the Secretary of War, marked D. Finding that the Secretary of the Treasury would under no circumstances receive on deposit any part of the sum awarded, and having this large amount of $30,000 locked up in the treasury,

and exposed to a total loss if we should fail to place it where the Secretary should direct, we were compelled to make deposits at such places as *his* convenience, and not *ours*, indicated. We were accordingly forced to sell the stock at a great loss to effect a deposit of $1,885,000.

7th. The refusal of the Secretary to permit us to enjoy the right to deposit at San Francisco has actually resulted in the loss of a large sum by your memorialists. This will be apparent when a calculation is made of the difference in the current rates of exchange between San Francisco and New York in February and the early part of March last; as, by reference to the letters marked E and F, you will perceive that the rate of exchange on New York, in the months named, was an average of three per cent. premium, and the interest which would have been gained by us while in transition, say twenty-four days, would have been one-third per cent. additional, and this premium and interest on the amount awarded us make a sum of near $100,000.

8th. That a large profit would have accrued to us had the Secretary executed the contract according to its terms, and accepted our offer to deposit at San Francisco, as his proposals plainly authorized us to do, appears by this simple statement: When we had deposited the money there we would have received from the treasury, or depository of the United States at San Francisco, certificates of deposit, which would have entitled us to an issue of stock. On this certificate we could have raised the money in New York, and having funds there we could have authorized our agent at San Francisco to draw bills on us payable in New York. These bills would have commanded at San Francisco a premium of three per cent.; so that, by this premium and interest in the difference of exchanges between San Francisco and New York, we should have realized on the $3,000,000 taken by us a profit of $100,000.

9th. Shortly after the loan was awarded, and after we indicated that it would be to our convenience to deposit at San Francisco, the government wanting money at that point, and refusing our right to deposit there, the Secretary contracted with Wells, Fargo & Co., of New York, the contract covering one year, to furnish the government with coin at that point, for which the Secretary issued his drafts on New York—Wells, Fargo & Co. paying a premium of $2 30 on the $100 on the drafts so issued by the Secretary. This contract will be verified by reference to the letter of Wells, Fargo & Co., hereto annexed, marked G. The terms of his proposals conferred on us this right. By this refusal to allow your memorialists to deposit $3,000,000 at San Francisco, which would have yielded to them a profit of $90,000, besides interest, and by selling that right to Wells, Fargo & Co., the Secretary cleared to the treasury a corresponding sum, *less* only a moderate commission. In point of fact he had already secured a profit to the treasury by inducing us to bid at a higher rate for the stock than it was worth in any American or European market, because of the right he had given to bidders in his proposals to deposit the money at San Francisco. To sell that *same* right afterwards to Wells, Fargo & Co., (at a premium of two dollars and thirty cents upon every hundred dollars,) to deposit such amounts as the Secretary might need in California, was, we submit, selling the same privilege to different and

competing parties and receiving the money of both. It was the sole consideration which induced us to bid for the loan. We offered a very high premium for the stock, which caused a profit to the government of about $35,700; had not this right been given in the proposals, we would not have made the bid, and, as a consequence, the next highest bidder below us would have been awarded the $3,000,000 at a premium of about $1 70 on the $100, making a difference in premium to the government of the amount stated.

10th. Again: Had our rights been conceded, we would have deposited the whole amount in San Francisco by the last of February, and by not doing it the government saved an average interest, as will be perceived by direct calculation, of over $37,500 up to the 21st June, at which date the Secretary informed us he required the remainder of the money we owed on the amount awarded us.

11th. Again: The amount of premium the government realized on the sales of the drafts to Wells, Fargo & Co., as above shown, and the loss the government would have been necessarily put to in freighting the surplus gold not wanted at that point by the government back to the treasury here or in New York, would amount to over $60,000, making a total gain to the government on the three million dollars awarded us, by a violation of the contract, of $133,200.

12th. The price of the government stock has considerably depreciated, and we have been compelled to suffer a corresponding loss from this in fulfilling our contract, on terms never assented to by us. Inasmuch as the Secretary was a party to the contract, your memorialists earnestly besought him to refer the question to the Attorney General, as the proper officer to construe the terms of the contract. This fair proposition, we regret to say, he refused to accept. Congress gives him the power to make a contract; he, a party to the contract, violates it by his own construction, and then refuses to submit the question to the Attorney General of the United States as to the rights of the contracting parties.

13th. Suffering so unjustly from this disregard of our rights, your memorialists, on the 26th September last, addressed a written remonstrance against this decision of the Secretary, and requested of him a careful review of his printed proposals, insisting that he had violated the contract, in having refused to receive a deposit of their amount at San Francisco, and persisted in claiming the right to deposit $1,115,000 of the loan yet unpaid by them at that place. The Secretary again refused, but assigned a very different reason from that given in his letter of January 29 last, marked C. In the one case, he stated that he did not require funds there, and could not give the authority to pay there on account of this loan; in the other letter, marked H, he insisted that the proposals did not authorize us to deposit there, and that he had so decided in the case of Howland & Aspinwall, and enclosed a copy of his letter to them of the 17th August, 1858, herewith, marked I. Our position was not at all similar to that of Howland & Aspinwall. They differ materially in all essential particulars. They proposed to alter the contract; we did not. We were prepared, and offered, immediately after the loan was awarded us, to put the amount at San Francisco. They asked an extension of

the time; we did not. They had only thirteen days to effect it; we had forty-three days. Ours was practicable; theirs was not. The Secretary held one per cent. as security for the performance of the contract by the day fixed in the proposals. Such was our right and ability to execute the contract. In consequence of his refusal to permit us to deposit at San Francisco, and having this large sum at stake, at the hazard of his will, we were compelled afterwards to beg his indulgence, but this was solely owing to his rejection of our offer to deposit the money in the depository selected by us under the contract. Believing that his refusal could not operate in law to extinguish our right to pay up at San Francisco, we again apprised him, in September, as before stated, of our disposition to deposit the balance of the loan at that place. We claimed this right on the well-settled principle that the Secretary, having thus prevented the execution of the contract by the 15th March, the day fixed in his proposals, could not by that act deprive us of our rights arising under his own proposals. This right existed after that time, and we have always been ready to execute the contract in good faith and honor.

14th. That the Secretary forced us to make deposits in such depositories as he might direct, or in the depositories to which the foreign bidders were confined, we refer you to a letter from the Secretary, marked K. This refusal of the Secretary to receive the balance at San Francisco compels your memorialists to abstain from depositing the balance at any other depository than the one selected by them. It is true he holds the one per cent. required by him under his proposals deposited by us for the faithful performance of our contract. That contract we have repeatedly offered to discharge. The Secretary of the Treasury has just as often refused to receive the money at San Francisco, the place of deposit indicated by our convenience. We have, therefore, never violated the contract; have sustained great loss by this decision of the Secretary, and are entitled to a just compensation on the part of the government for the damage it has caused us. We claim, then, not only the one per cent. that remains in the treasury, deposited by and belonging to us, but a just compensation for the sacrifice we have suffered in the value of the stock, and the loss that has occurred by the difference in exchange, had we been permitted to deposit the money at San Francisco, and also the loss of the use of our money to carry the stock. After the violation of the contract on the part of the Secretary, your memorialists were forced to seek an extension of the time of payment when called upon by the Secretary on the 21st of June last; but these earnest favors asked of the Secretary, and by him granted, flowed as a consequence from the violation of the contract without acquiescence in his previous decisions, and which we were legally entitled to claim.

15th. We should not merely have been released from the severe and trying embarrassments that have originated from his refusal, but have enjoyed the fruits of our contract. The violation of the language of these written proposals actually operated to exclude California from its provisions, whereas the designation of certain cities on the Atlantic as the points of deposit for the non-resident bidders conclusively

left all other places in the United States to the selection of the resident bidders. In that sense we made our bid.

16th. For the violation, then, of this contract, which has produced such great loss and damage to us, we appeal for redress to your honorable bodies, and confidently believe that you will not permit the rights of the citizen to be sacrificed at the cost of the good faith of the government.

And your memorialists will ever pray.

SWEENY, RITTENHOUSE, FANT & CO.

EXHIBITS.

A.—*Proposals.*

TREASURY DEPARTMENT, *December* 17, 1858.

Sealed proposals will be received at this department until 12 o'clock noon of Monday, the 24th of January next, for ten millions of stock of the United States to be issued under the act of 14th June, 1858. Said stock will be reimbursible in fifteen years from the 1st of January next, and bear interest at five per centum per annum, payable semi-annually on the first days of January and July of each year.

No bid will be received below par, and none for any fraction of one thousand dollars. No bid will be considered unless one per centum of the amount is deposited, subject to the order of the Secretary of the Treasury, with a depositary of the United States, whose certificate of the same must accompany the bid. In all cases the bids must be unconditional, and without reference to the bids of others, and must state the premium offered therein.

The sealed proposals should be endorsed on the outside of the envelope "Proposals for loan of 1858," and be addressed to the Secretary of the Treasury, Washington, D. C. The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him. Should bids be accepted from parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans.

Certificates of stock for sums of one thousand dollars each, payable to the successful bidders or bearer, with coupons of semi-annual interest from the 1st of July next, also payable to bearer, attached thereto, will be issued for the amount of the accepted bids upon the certificates of deposit to the credit of the Treasurer of the United States with the depositaries of the United States. The stock will in all cases bear interest from the date of such deposit. The interest from that date to the 1st of July next will be paid to the successful bidder or his attorney by the depositary where the deposit was made.

Successful bidders will be required to deposit the principal and premium of their accepted bids on or before the 15th of March next

The preliminary deposit of one per cent. will be immediately directed to be returned to the unsuccessful bidder.

HOWELL COBB,
Secretary of the Treasury.

B.

OFFICE OF DUNCAN, SHERMAN & CO., BANKERS,
New York, November 30, 1859.

GENTLEMEN: We have yours of the 28th instant.

Answering your inquiries, we state soon after the award of three million dollars United States five per cent. loan was made to you by the Secretary of the Treasury, we recollect receiving a visit from your Mr. Sweeny, and the subject of your depositing money to the credit of the United States treasury in San Francisco was discussed between us. We should then have been quite ready to have made an arrangement with you to make the payment there for your account, receiving the United States bonds as security.

It is not easy to say how rapidly the amount of three million dollars could have been deposited, much depending on the demand at San Francisco for sight exchange on New York, which usually amounts to several millions of dollars per month.

We doubt not the whole payment could have been effected within a few weeks, and faster than the wants of the treasury required.

The expense of transmitting gold from San Francisco to New York at the period you refer to was as follows:

Freight, 1½ per cent.; insurance, 1 per cent.; and 5 per cent. primage.

We had no interest, nor have we now any interest, in any deposit made by you prior to the 15th September, 1859, on account of the United States five per cent. loan of 1858.

We are, truly, your obedient servants,
DUNCAN, SHERMAN & CO.

MESSRS. SWEENY, RITTENHOUSE, FANT & CO.,
Washington.

In view of the large difference of exchange then existing between San Francisco and New York, it is plain it would have been much more to your interest to pay at San Francisco than at New York.

C.

TREASURY DEPARTMENT, *January* 29, 1859.

GENTLEMEN: In reply to your inquiry of this date, I beg to state that the department does not require funds to be deposited with the

assistant treasurer at San Francisco on account of the loan, and of course cannot give the authority requested in your letter.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

D.

WAR DEPARTMENT, *November* 30, 1859.

GENTLEMEN: In answer to your inquiry as to the reasons assigned by the Secretary of the Treasury to me for not acceding to your request to make your deposits in San Francisco in payment of your purchase of United States bonds, I have to say:

Mr. Cobb stated to me, as well as I remember, early in last February, that, with every disposition to oblige you, he did not feel authorized to grant the request, because he had already made an engagement with other parties to transfer to the Pacific coast such funds as his department needed there.

Very respectfully, your obedient servant,

JOHN B. FLOYD.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

E.

NEW YORK, *November* 25, 1859.

DEAR SIRS: We have your favor of 23d instant, and observe contents.

The current rate of exchange for sight bills on New York at San Francisco was, per steamer, February 5, 1859, 3¼ per cent. premium; per steamer, February 20, 1859, 3¼ per cent. premium; per steamer, March 5, 1859, 3 per cent. premium; per steamer, March 20, 1859, 3 per cent. premium; and the rate, per steamer of 20th ultimo, was 2 per cent. premium. The decline in rates is attributable to the reduced rate of freight on treasure, same having fallen from 1½ to ½ per cent.

Pray command us whenever we can serve you, and oblige,

Yours, truly,

WM. T. COLEMAN & CO.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

F.

NEW YORK, *November* 25, 1859.

GENTLEMEN: We have your favor of the 23d instant.

The rate of exchange on New York at San Francisco during the month of February, 1859, was three per centum; one-fifth, the State stamp tax, being sometimes added.

For the mail which left San Francisco March 5, the rate was lower and somewhat unsettled—varying from $2\frac{1}{5}$ to $2\frac{1}{2}$ per cent.—$2\frac{1}{4}$ being the more general rate.

For the next mail (March 20) the former rate, as in February, was established.

Respectfully, yours,

WELLS, FARGO & CO.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

WELLS, FARGO & Co.,
NEW YORK AND CALIFORNIA EXPRESS AND EXCHANGE Co.,
New York, December 12, 1859.

GENTLEMEN: In reply to your favor of the 5th instant, we beg leave to state that the contract between ourselves and the Secretary of the Treasury, for exchanging coin with the assistant treasurer of the United States at San Francisco, for transfer drafts drawn upon the assistant treasurer of the United States at New York, was concluded February 5, 1859.

The contract dates from January 29, 1859, and will continue till January 29, 1860.

The premium paid the government under this contract is $2 30 per $100.

Respectfully, yours,

WELLS, FARGO & CO.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

H.

TREASURY DEPARTMENT, *September* 26, 1859.

GENTLEMEN: In view of your letter of this date, I beg leave to state that the question whether bidders for the loan of 1858 were entitled under the proposals to deposit with the assistant treasurer at San Francisco has been repeatedly presented and decided by this department. Soon after the offers for the first instalment were awarded, the financia article in the New York papers referring to the accepted bids speci-

fied that of Messrs. Howland & Aspinwall as affording a large profit from their facilities in making deposits at San Francisco, which it was understood they intended to do, under the terms of the proposals to which you refer.

I herewith enclose a copy of my letter to them of the 17th of August, 1858, which explains the grounds why they and others, who had made similar applications to deposit smaller sums, had no such right.

The phraseology of the proposals being the same in regard to places of deposit, the same reasons apply to your claim to deposit at that place—the difference being that deposits for the first instalments were required by the proposals to be made by the 1st September, 1858, and for the second by the 15th March, 1859.

As the claim of Messrs. Howland & Aspinwall to deposit at San Francisco obtained much notoriety in financial circles at the time, it was presumed that all bidders for the second instalment were aware that no speculation in exchange could be made by deposit there. It is therefore impossible for this department to recognize that the proposals issued for the loan gave you any right whatever to deposit at San Francisco, after the 15th of March, when all offers for the loan became payable by the express terms of the proposals.

With every desire to extend to you all the accommodations in my power, consistently with the public service, in regard to the payment due from you on account of the accepted offer for the loan, as due provision has been made for the required funds in California, it is impossible to accede to your request to deposit there.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

I.

TREASURY DEPARTMENT, *August* 17, 1858.

GENTLEMEN: Your letter of the 16th instant is received, with certificates of deposit with the assistant treasurer at New York of $22,350 on account of premium on your accepted offer for the loan.

In regard to your indication that it will be most convenient for you to deposit the principal, $450,000, with the assistant treasurer at San Francisco, between now and the 1st of January next, I must take leave to state that other parties have proposed to deposit at San Francisco, on account of their offers for the accepted loan, and this department has decided to refuse to accept any deposit at that place on that account. I must therefore decline your proposition to deposit there. I shall be happy to accommodate you, as far as the public service will admit, as to the time of making deposits on account of your offer, with any of the depositaries in the Atlantic States, but must hold the bidders for the loan to the terms of the notice, in regard to any deposit

at San Francisco, which was, in effect, excluded by the requirement that all successful bidders must deposit the whole amount on or before the 1st of September.

Very respectfully,

HOWELL COBB,
Secretary of the Treasury.

Messrs. Howland & Aspinwall,
New York.

K.

Treasury Department, *August* 27, 1859.

Gentlemen : Agreeably to your request I have directed the depositary at Mobile to accept $100,000, in the credit of the Treasurer, on account of your bid for the late loan.

As New Orleans is one of the places of deposit, on account of the loan specified in the official return, there is no occasion for instructions to the assistant treasurer, as he will doubtless receive any such sums as may be presented in your behalf and grant the usual certificate of such deposit.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Messrs. Sweeny, Rittenhouse, Fant & Co.,
Washington, D. C.

Before the Committee on the Judiciary of the Senate of the United States.

IN THE MATTER OF SWEENY, RITTENHOUSE, FANT & CO.

Argument for Claimants.

By leave we respectfully submit to the committee the following considerations of law and fact:

The legal points involved are very simple when the facts are understood; and to arrive at once at the material points by which the rights for the claimants are to be governed, we will take for granted—

1st. That the act of 14th June, 1858, was passed, authorizing the issuing of the ten millions of stock.

2d. That the Secretary of the Treasury did advertise, under date of 17th December, 1858, for sealed proposals for the same.

3d. That Sweeny, Rittenhouse, Fant & Co. did bid for and were awarded three millions of said stock, being nearly one-third of the whole, at a premium of 2 $\frac{89}{100}$ per centum.

The question is, what were the terms of the contract by which such bid was made and accepted? To arrive at this no other facts

can be considered except the plain terms of the written proposals, and such immediate considerations and facts as are directly connected therewith, but which cannot be admitted to vary the terms of the written proposals, which is *the* contract, either in letter or spirit.

The terms of the written proposals are, *verbatim*, as follows:

"*Proposals.*

"TREASURY DEPARTMENT, *December* 17, 1858.

1st. "Sealed proposals will be received at this department until 12 o'clock noon on Monday, the 24th of January next, for ten millions stock of the United States, to be issued under the act of 14th of June, 1858. Said stock will be reimbursible in fifteen years from the 1st of January next, and bear interest at five per centum per annum, payable semi-annually on the first days of January and July of each year.

2d. "No bid will be received below par, and none for any fraction of one thousand dollars. *No bid will be considered unless one per centum of the amount is deposited*, subject to the order of the Secretary of the Treasury, with a depositary of the United States, whose certificate of the same must accompany the bid. *In all cases the bids must be unconditional*, and *without reference to the bids of others*, and *must state the premium offered therein.*

3d. "The sealed proposals should be endorsed on the outside of the envelope 'Proposals for loan of 1858,' and be addressed to the Secretary of the Treasury, Washington, D. C. *The sums which may be accepted from any bidder* will be required to be paid in the depository of the United States nearest to his residence, *or indicated as most convenient by him.* Should bids be accepted by parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans.

4th. "Certificates of stock for sums of one thousand dollars each, payable to the successful bidders or bearer, with coupons of semi-annual interest from the first of July next, also payable to bearer, attached thereto, will be issued for the amount of the accepted bids upon the certificates of deposit to the credit of the Treasurer of the United States with the depositaries of the United States. The stock will in all cases bear interest from the date of such deposit. The interest from that date to the 1st of July next will be paid to the successful bidder, or his attorney, by the depositary where the deposit was made.

5th. "Successful bidders will be required to deposit the principal and premium of their accepted bids on or before the 15th of March next.

"HOWELL COBB,
"*Secretary of the Treasury.*"

The first paragraph above quoted announces to the world what the Secretary of the Treasury is going to do, and his authority for doing it; that he is going to issue "*ten millions stock of the United States,*

under the act of 14th of June, 1858," and invites the capitalists of the world to bid for the same.

The second and third paragraphs tell the bidders what they *shall* and *shall not* do. They point out the door through which they must come to the treasury with their respective bids, and the conditions precedent by the observance of which they can alone be admitted. Thus—

1st. "*No bid will be considered unless one per centum of the amount is deposited.*"

2d. "*In all cases the bids must be* UNCONDITIONAL;" and

3d. "*Without reference to the bids of others.*"

4th. Should be endorsed "Proposals for loan of 1858," and be addressed to "the Secretary of the Treasury," &c.

5th. "*The sums which may be accepted* from any bidder will be required to *be paid in the depository of the United States nearest to his residence*, OR INDICATED AS MOST CONVENIENT BY HIM."

The four first-named conditions and stipulations apply to the bidder. They show what he is to do before his bid "*will be considered.*" Any departure on his part from these specific prerequisites will preclude him from being regarded in considering and awarding the bids. As the bid of the claimants was "considered," and near *one-third* of the *whole loan*—three millions—was awarded to them, proves that they did comply with all the conditions proclaimed by the Secretary.

The fifth stipulation is the only one in the whole contract or "proposal" which confers any choice of action on the bidder. What is it? Why, that when he has done all that is thus required of him to make his bid acceptable, he may, if a *resident* bidder, deposit "*in the depository of the United States nearest his residence*, OR INDICATED AS MOST CONVENIENT BY HIM." This, and nothing else, is left to the choice of the citizen who is about to assume an onerous obligation, and is permitted to select—to "*indicate*"—the "depository of the United States" "as *most convenient*" to meet its requirements.

Is not this language, "*indicated as most convenient by him*," too plain, too conclusive, as well as too important in its bearing on the mind of the bidder, to be overlooked? Is it not this very phrase and stipulation of all others that would induce the citizen to cast his eye over the whole country, and, seeing the point where exchange or other considerations would be in his favor, rate his bid accordingly? Certainly it is; and any judge or jurist who will dispute it may, with equal propriety, say that the deposit of "*one per centum*," or that "*the bids be unconditional*," could have been dispensed with by the bidder and still left him entitled to his bid.

That it is the settled, legal, and authoritative mode of construing a covenant, contract, or stipulation, requiring particular things to be done, in such a way as to give not only effect to each and every provision, but that which is most obvious in its common-sense meaning, is a rule of law, as well as reason, too well known to the intelligent jurists who compose this committee to be offered to be verified by reference to the authorities. It is a principle which marks its way from the first text-book to the report of the case last adjudicated, where such question is discussed or involved. It is the only rule which can

preserve the integrity of written stipulations, or prevent the plainest covenants from becoming a mere *web of words*, to be filled with whatever the caprice or design of the contracting parties, or one of them, may choose to imply.

The Secretary of the Treasury, we have seen, advertised according to law for *the ten millions* loan. Like the merchant offering his goods in the market, he declared the rules according to which he would, at a particular day, vend the government stocks, and asked persons to come and buy, and declared, as an inducement to the *resident* bidder, that he might pay at the depository "*indicated as most convenient by him.*" Sweeny, Rittenhouse, Fant & Co., viewing this delegated right to "INDICATE" in the face of the many restrictions preceding it, said, we will bid the large premium of $2 89 for *three millions* of this loan, and having the right, by this proposal upon its face, to select our depository anywhere in the United States as "*most convenient,*" will deposit at San Francisco, and make our profit on the return exchange; complying with all the terms of the contract, paying into the United States Treasury thirty thousand dollars as the guarantee of their good faith, offer the $2 89 premium as the price of their privilege, and *three millions* of the stock is awarded them. They then say, San Francisco is "the depository of the United States" "*most convenient*" for us; we will deposit there. The Secretary says, no, you shall not deposit at San Francisco. They ask why? Because "the department does not require funds to be deposited with the assistant treasurer at San Francisco."—(See letter of January 29, 1859, page 13 of memorial.)

Before the Secretary could rely upon or successfully urge such grounds as the above for refusing these bidders, or any others, the right to deposit as proposed, he should have looked to his "*proposals,*" and seen whether he had made any such reservations. He should have seen whether he excluded San Francisco, or had stated the bidders might deposit in "the depository" "nearest their residence or *indicated as most convenient by them,*" PROVIDED "the department required funds to be deposited" at such place. This the Secretary did not do, and in the absence of such exception or restriction appearing in the face of the proposals, the language and terms stated in them must have their natural force, and carry the right of the bidders to deposit at San Francisco or elsewhere, and it is an arbitrary interpolation of conditions, of a material character, not named in the terms accepted, and which, if admitted, operates to destroy all the objects the parties had in bidding so large a premium, and is in the strictest sense of the word an absolute violation of their rights.

Seeing then how important a correct interpretation of this part of the Secretary's "proposals" becomes, in settling the question in dispute, we ask leave to present this controlling sentence in a more analytical shape, and for convenience restate the language used by the Secretary in full:

"*The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him.*"

Upon the simple reading of this clause in the "proposals," (and

which is the only contract between the parties,) two alternate rights are announced to the resident bidder:

1st. He may, if he chooses, pay in the depository nearest his residence, wherever that may be; or,

2d. He may pay in any other "*indicated as most convenient by him,*" whether it be Boston, New Orleans, or San Francisco. Will these two plain alternative rights and privileges, as named in the letter of the proposals, be seriously disputed by any intelligent mind? And if the successful bidder had this choice to govern him at the time he made his bid, at what subsequent stage of the proceedings, and by what authority, was he deprived of it? And could he be so deprived, unless upon a reconvention wherein he had an equal chance to accept or refuse the newly imposed conditions? Had the language fixing the place of payment stopped with the words, "will be required to pay at the depository of the United States nearest his residence," then no such question could arise; but when you add, "*or indicated as most convenient by him,*" does it not carry him to any depository that suits that convenience? If not, then why was the subsequent clause just quoted put in? You may strike out either clause, and it still leaves the sentence complete. Omit the words "*nearest to his residence, or,*" and see how it will read, thus:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States *indicated as most convenient by him.*" *By* him, and not *to* him—the *bidder's* convenience, and not the *Secretary's*, is thus plainly guaranteed, and how is it possible to be denied? Is it not impossible to do so, unless you ignore California as a State in the Union, and deny that San Francisco is a "depository of the United States?"

Suppose Sweeny, Rittenhouse, Fant & Co. were citizens of the State of California, and, making the same bid, had been awarded three millions of the loan, would the secretary have allowed them to deposit the whole or any part of it at San Francisco? If so, why? He needed no money there "*on account of the loan;*" and though "nearest to his residence," as well as "indicated as most convenient by him," still the reason and the rights of the Secretary were just the same—and if proper in the one case, must be proper in the other—and thus enable him to drive the bidder from the Pacific to the Atlantic shore to make his payment. Or if it is conceded, as it must be, that, as citizens of California, they could deposit at San Francisco, why have they not the same rights, neither more nor less, as citizens of the District of Columbia?

Or, again: Suppose, as citizens of California, the same parties, or any others, had made the same bid, and offered to deposit in New York, could the Secretary say no, you must deposit at San Francisco, because "*the deparment does not require funds*" at New York "*on account of the loan,*" and I want the money in California, which is nearest to your residence. And if such reasoning or ruling is admissible in the one case, must it not be so in the other? Are not the places equi-distant apart? And if such action can be applied in either case, what becomes of the stipulation, "indicated as most convenient by him," the bidder? Or were these important words put

in the proposals to mislead and deceive the public? The use proposed to be made of them in this case has palpably the latter effect.

But, believing that a fair interpretation of the "proposals" under which these parties made their bid is all that is desired, we will look a step further as to what is the proper meaning of the words "*or indicated as most convenient by him.*" Do these words mean a mere *geographical* or a *financial* "convenience?" In the first place, if the former is to be claimed as their meaning, then the stipulation is wholly superfluous, as they confer no additional privilege on the part of the bidder, as the preceding words, "nearest to his residence," had bound him to such depository, and left him no convenience to be "*indicated.*" But can the words have a geographical meaning at all? We respectfully insist they cannot; that when the bidder was told he might select the place "indicated as most convenient by him," it meant, and does mean, his *financial* convenience, and nothing else; and that such financial convenience could extend to any public depository of the United States, unless there were words precluding any particular one, which we have seen is not the case. For such purposes, and all others, as held by the Supreme Court, the United States Treasury, as to its government and sovereignty, is presumed to be, in each and every place alike; and when, for any purpose, this broad and essential interpretation is to be precluded, apt and precise words of limitation must appear. In the absence of such limitation, the right of the *accepted bidder* in this case is co-extensive with this ubiquity and omnipresence of the treasury itself, and is solely a financial right and convenience, irrespective of geographical lines or locations. The bidder may live in Maine, and it being his *convenience* to deposit at New Orleans, he has the right to do it. He may live in Texas, and if it be his convenience to deposit in Boston, his right is unquestionable. Or he may reside in Washington, and finds it to his *convenience* to deposit in San Francisco, and while bidding under the proposals before us, has the unqualified right to deposit there, or else he has no right to "*indicate*" either choice or "*convenience*" in the premises; and hence the inserting of such words, however unintentionally, was to draw the bidder into a high rate of premium, get his $30,000 in the treasury, and then subject him to the most arbitrary and ruinous exactions.

In interpreting these proposals, the words "indicated as most convenient by him," while they have no reference to locality, have every reference to *profit*. It is the latter consideration which will make the bidder offer a higher or lower premium, and in this case caused Sweeny, Rittenhouse, Fant, & Co., to offer $2 89 per cent. premium for three millions of that loan, the very highest rate offered for such a large amount, or else it could not have been awarded to them. They had San Francisco in view as the place "indicated as most convenient by them" where they could make a profit, the approximate object of their bid; and the Secretary had no earthly right, under his solemn contract and inducement held out to them, to deprive them of their just and legal rights in the premises.

That Sweeny, Rittenhouse, Fant, & Co., did bid with reference to paying at San Francisco is not to be disputed, when it is shown that,

though this three millions of the loan was only awarded them on the 25th day of January, 1859, they as soon as four days afterwards, to wit, the 29th of that month, made formal application, or rather gave notice, that they desired to pay at that depository, or, in the words of their contract, "indicated" San Francisco "as most convenient" for them, as is proved by the letter of the Secretary of that date, (29th January, 1859,) refusing to allow them to pay at that place.—(See page 13 of memorial.) They persisted in pressing their right to deposit there, but are as often refused for alleged reasons, which we will consider presently. But certain it is, the contemporaneous acts of the parties, which is ever the best and most reliable evidence of intention, prove conclusively that these bidders both understood and claimed they had the right, and made their liberal bid in faith of the right, to deposit and pay at San Francisco.

What could induce these men to bid $2 89 for three millions of stock, if they did not suppose they saw the place where they could turn it to account and make a profit? The stocks were not at a premium such as to justify such bid, if to be paid at any of the Atlantic depositories. No margin of profit was in sight, or even possibility against loss, unless it was to pay at San Francisco, and which would have paid them a profit, as will soon be shown.

Will it be said by any one that the parties should have made their bid payable at San Francisco? If so, let him cast his eye back to the specific directions given by the Secretary that "*in all cases the bids must be unconditional.*" A bid saying, "we will take three millions of the stock, payable at San Francisco;" or, "provided we may deposit or pay at San Francisco," or any words to this effect, would have been a positive *condition,* stated on the face of the bid, and thus have prevented it from being considered; for "in *all* cases the bids must be unconditional, *and without reference to the bids of others.*" The latter prohibition is distinct from the former, and means to enlarge its effect by precluding *all conditons.* In the face of the proposals, the parties would have the same right to say, "We will take three millions at $2 89, provided any one else bids as much," as to say, "We will take three millions, provided we can pay at San Francisco." The one is not more nor less a condition than the other, and both are absolutely prohibited by the terms of the proposals. If the proposals had directed the bidders to state where they would wish to pay, it would have been their duty to name the place; but in the absence of such a direction, and all *conditional* bids being excluded, it was neither the duty nor the right of the bidder to name the place, but must have vitiated the bid in which such condition appeared. In addition to these controlling facts, it would have been folly in a bidder to name a particular place, when, by the terms of the proposals, all "depositories of the United States" were open to him, either that "nearest to his residence," or the one "*indicated as most convenient by him.*"

Besides this, too, it must be observed that no one had a right to take steps towards *indicating* any place of payment till his bid was accepted, till he was a successful bidder, and the amount awarded to him. He then had a right to "indicate" the place of payment most

convenient to "him," which it is shown these parties did do immediately after their bid was accepted.

In the letter of the Secretary to Sweeny, Rittenhouse, Fant, & Co., of the 29th January, 1859, refusing to accept their payment at San Francisco, after they offered to pay, thus he says:

"I beg to state that the department does not require funds to be deposited with the assistant treasurer at San Francisco, on account of the loan," &c.

From this it would be inferred the department did not require any funds at that place.

The letter of the Secretary of War to these gentlemen, touching the same subject, under date of November 30, 1859, gives a little different reason from this, as derived from Mr. Cobb's statements. He says:

"Mr. Cobb stated to me, as well as I remember, early in February last, that, with every disposition to oblige you, he did not feel authorized to grant the request, *because he had already* made an engagement with other parties to transfer to the Pacific coast such funds as his department needed there."—(See letter, page 13 of memorial.)

By referring to the letter of Wells, Fargo & Co., we find some important evidence bearing upon this subject. They say:

"We beg leave to state that the contract between ourselves and the Secretary of the Treasury, for exchanging coin with the assistant treasurer of the United States at San Francisco, for transfer drafts drawn upon the assistant treasurer of the United States at New York, *was concluded February* 5, 1859. The contract *dates* from *January* 29, 1859, and will continue till January 29, 1860.

"*The premium paid the government under this contract is* $2 30 *per* $100."—(See page 15, memorial.)

Now, while this evidence proves the fact of such arrangement being made, it shows the error of the statement that no funds were needed there at the time, or that any "engagement" was "made with others" to place such funds at San Francisco when these parties selected that depository as their place of payment, under their bid. It shows that, on the 29th of January, these parties were denied the right to deposit at the place named, as the department required no funds, &c.; and that on the 5th of February, just *seven* days after this refusal, a private contract was made with Wells, Fargo & Co., to place "*funds*" there; and what is still more significant is, that that contract was dated back to the 29th of January, the very day these parties were refused their stipulated right to "*indicate*" the depository at San Francisco as their place of payment. It is, therefore, shown that "*funds*" were "*required*" at that place, and that no "engagement" was made when these gentlemen applied.

But a still more important fact is shown by this evidence of Wells, Fargo & Co., which bears directly upon the rights of the parties before you, and proves wherein they would have made their profit had the Secretary not have deprived them of the rights and privileges which he tendered in his "proposals," and which they fairly purchased. Wells, Fargo & Co., speaking of their contract of the 5th February, say:

"*The premium paid the governmemt under this contract is* $2 30 *per* $100."

On the 25th of January, just ten days earlier, Sweeny, Rittenhouse, Fant & Co. "paid the government" the larger sum of $2 89 per $100 for this same privilege, being 59 cents per $100 more than Wells, Fargo & Co. paid. They did more; they at the same time deposited $30,000 as a guarantee and forfeit, that they would comply with their contract, looking solely to their right to pay at San Francisco, and thereby enjoy the profits in exchange which would enable them to stand the high rate, $2 89 per $100 on the *three millions* awarded to them, little supposing the Secretary would trade away the same privilege by private sale, at reduced rates, to other parties. This evidence proves the whole *injury* perpetrated upon those parties. It was an error in the Secretary not to *exclude* San Francisco in the "proposals," if he meant to reserve it for private sale, or to sell to Wells, Fargo & Co. privately, for $2 30, what Sweeny, Rittenhouse, Fant & Co. paid publicly $2 89 for. Had they known of the Secretary's contemplated private sale, he would not have got their public bid at the rates he did; and whatever merit such an act may acquire on the score of gain to the government in this case, it more than sacrifices by the impeachment of its good faith and consequent losses in all succeeding transactions. Had such a private contract been made before the proposals were advertised, or the bids put in and accepted, it might wear a less exceptionable feature; but when it was done after the proposals were made, without restriction or exception as to places of payment, and even after the parties "indicated" San Francisco "as most convenient," and the contract dates back upon that very day, and still no notice given to these *bona fide* bidders at so high a rate, it leaves the action of the Secretary too clearly erroneous, too bold to be defended or justified.

Nor does the Secretary in the least vindicate his cause by his letter to these parties of the 26th September, 1859, (see pages 15, 16, of memorial.) He only informs them he had refused others to deposit at San Francisco, but does not show that he had the right to do so. One violation of law, though often a *precedent* for, cannot *justify* a second, or a third; nor does the showing of a multiplicity of victims, by a high public functionary, relieve the wrongs done to one; and by no means could their secret agonies serve as a warning, that the public "proposals" of the honorable Secretary did not mean what their plain English read. It is true, he says that the matter of his former refusals was discussed "*in financial circles at the time*," and that "it was presumed that all bidders for the second instalment were aware that no speculation in exchange could be made by deposits there." It *would* perhaps have been better for these gentlemen to have sought the clamors and traditions of the past, than to have relied upon what the Secretary wrote and signed, or to have learned from the misfortunes of others, that "*no* speculation" or profit could be made by heeding the proposals for a public loan, as published by a United States Secretary of the Treasury. Or does the Secretary mean that "no speculation" shall be made by a deposit at San Francisco, but may be permitted by making payment at any other depository?

On the other hand, however, it may be claimed that had the Secretary, being a party to all these demands, refusals, and complaints, only been pleased to make them part of his written proposals, instead of what he did write and publish, the true character of his dealings could have been better understood, and nobody deceived. This statement of the Secretary, though with others, shows that all preceding bidders interpreted his language the same as Sweeny, Rittenhouse & Fant did, and that he alone, as a party in each case, took a different view. The motive which prompted him, however, is equally obvious.

The Secretary seems to put forth the assertion "that no speculation in exchange could be made by deposits there" by the bidders, as though he had a motive to prevent such a result. We believe it is the object of all capitalists to make a "profit by exchange" in some shape, when they bid for a public loan, and equally the expectation of the government that its citizens will make some profit in bidding for its loans. But when the government shall teach the people that while tendering them its loans it will seek to embarrass and cut off all chances of profit, its stocks will not often bring $2 89 premium in the market, or find a purchaser at any price.

And we will here add, it is the pursuit of the capitalist and banker to seek to make money by exchange from one point of trade to another; but we were not aware till now that the government was engaged in that business on its private account. Nor can we see what precise account will be opened for this "$2 30 per $100 premium" received and now being received from Wells, Fargo & Co., and keep within the strict letter of the 22d and 23d sections of the sub-treasury law, the latter of which says, in speaking of the rules and regulations issued by the Secretary of the Treasury—

"But in all these regulations and directions, it shall be the duty of the Secretary of the Treasury to guard, as far as may be, *against those drafts being used, or thrown into circulation as a paper currency or medium of exchange.*"—(See 5th vol. Stat., page 391.)

Now when the Secretary, instead of guarding against such a use of the public funds, brings the government into the market as a vender of exchange on its private account, as is shown to have been done in this case, it is hardly consistent with the letter or spirit of the sub-treasury law just quoted; and especially must it bear such aspect when at the very time Sweeny, Rittenhouse, Fant & Co. had bid and paid $2 89 per $100 for that very exchange, and were pressing for the right "*to transfer to the Pacific coast such funds as his department needed there;*" and hence there was no impending necessity for the act. If such is proper, the government had better go into the banking business, and put all its drafts "*in circulation as a paper currency*, or medium of exchange," both of which are prohibited.

But we have digressed further than we intended upon points perhaps not wholly material to the issue involved. The question is to be determined upon the right of Sweeny, Rittenhouse, Fant & Co. to deposit and pay at the United States depository at San Francisco; and we cannot see how it is possible that it can be seriously disputed when the simple terms of the proposals are read, aside from any extraneous proof, as we have hereinbefore labored to show. The words

contained in the proposals are sufficiently plain and unambiguous within themselves to determine the matter, and this construction has been given them by the leading financial capitalist of the country.

The Secretary shows, as we have seen, in his letter of the 26th September, 1859, (see pages 15, 16, of memorial,) that every capitalist took the same view as do the parties in this case. Great pains have been taken to consult with those whose opinions ought to weigh, and they all concur in the principles of construction here claimed. As a specimen, we here insert one of the letters received from a well-known and responsible banking house in New York, whose opinion was asked. It says:

NEW YORK, *December* 17, 1859.

DEAR SIRS: Your esteemed favor of 10th instant was duly received, enclosing your memorial to Congress for damages caused you by the Secretary of the Treasury in the exactions he made upon the government loan of December, 1858.

We deem your position as clearly correct, and your rights unquestionable. *We* carefully read the proposals for same loan and bid for $100,000, payable in San Francisco, and $60,000 was awarded to us at a premium of $2\frac{60}{100}$; we made our deposit and forwarded it to the Secretary in due course, and were amazed at the receipt of a letter in reply, stating that payments *could not* be received in San Francisco.

We went into correspondence at once with the honorable Secretary, showing plainly the rights of bidders, and more particularly our rights, as we had bid *for our San Francisco house, and had the money there to pay* at the depository nearest our residence, &c. But it was of no use; and, in answer to our letters, we only received laconic replies, referring to the first refusal of the Secretary.

Our senior then took advice of leading financial parties in this city, and found their opinion unanimously concurring with his own, and thus fortified, waited on the honorable Secretary in person, but of no avail. No arguments were used in answer to ours, (which could not be rebutted,) but the reply that the department did not want the money in San Francisco, had so advised us and other parties, *and would not receive it there*, and that further discussion was unnecessary, as the Secretary had made his decision, and would not alter or reconsider it.

This gave such a shock to our confidence as to the good faith and management of the department, that we determined to at once rid ourselves of the stock, and making good the payment in *New York*, as *demanded*, (instead of San Francisco, from whence we had to remit our funds,) we disposed of the stock without delay, and at a considerable loss. We know of no temptation now that would induce *us* to bid on a treasury loan; for when plain English language is made to mean nothing, and plain contracts hold nothing, except on one side, there is neither satisfaction nor security in business.

We return your memorial, as requested, and remain, yours truly,

WM. T. COLEMAN & CO.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

The language and meaning of this letter need no comment. It shows not only that there can be no misunderstanding as to the language used by the Secretary in his "proposals," but the consequences which must result to the discredit of the good faith of the government in the public mind by permitting such abuse of it.

We will not discuss the measure of damages due to the claimants till the question of their right to recover in the premises is definitely settled. When that is done, and should it be done according to the plain principles of law and fact adduced, the proper measure of relief will be easily arrived at.

Begging pardon for the length of this argument, we respectfully invoke the serious consideration of the committee to the several questions we have aimed to submit. Its importance cannot be too highly estimated, as its effects must reach and influence the public confidence in all future negotiating of public loans.

All of which is most respectfully submitted.

JOS. B. STEWART,
Counsel for Sweeny, Rittenhouse, Fant & Co.

PHILADELPHIA, *January* 20, 1860.

My opinion has been requested as to the right of any successful bidder for the loan under the act of Congress of the 14th June, 1858, and the proposals of the Treasury Department of the 17th December, 1858, to select the place of deposit.

This question is to be solved by reference to the language of these proposals on this subject, which language is as follows:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him. Should bids be accepted by parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans."

A discrimination is here made between the resident and non-resident "bidder," the latter being required to deposit in one of four cities named, at his option, but the former may select "the depository of the United States nearest to his residence, or indicated as most convenient by him." Now to whom do these words "by *him*" refer? If to the Secretary, then the resident bidder is in a much worse condition than the non-resident, for whilst the latter may select at his option any one of the four great public depositories, the resident bidder has no such option, but must make his deposit at any point indicated by the Secretary of the Treasury. Such a discrimination against our citizens, (even if legal,) was never intended by the Secretary, and, if adopted, would necessarily exclude all domestic competition, greatly reduce if not expunge any premium on government loans, and throw them all into foreign hands at low rates, to be fixed substantially in future bids for such loans, by combinations of foreign capital, leading to consequences most disastrous to the country. The true, if not indeed the only legal

course, is to make no discrimination between bidders in proposals for public loans. If the sentence were thus construed, it would read thus:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by *the Secretary.*" If this were so, the citizen of Oregon may be compelled to deposit in New York, or of New York in Oregon—conditions on which the loan would never have been taken at any premium. But this would violate the rules of grammar, as well as of common sense. The term "bidder" is not only the immediate, but the only antecedent to the words "*his* residence," or "by *him.*" Both refer only to the "bidder." It is *his*, the bidder's residence, and not the Secretary's, and indicated by *him*, the bidder, and not the Secretary, that are clearly designated.

In the interpretation of all written instruments, the rules of grammar, which are the laws authoritatively prescribed for ascertaining the meaning of any sentence, cannot be disregarded, especially a rule so simple, obvious, and fundamental, as that *the pronoun must refer to the noun-substantive, which is its immediate antecedent.* But when, as in this case, the word "*bidder*" is the only antecedent to "*his*" or "*him*" in the *same sentence*, and in regard to the *act to be performed*, the rule becomes imperative. Indeed it can hardly be contended that in a most important official written instrument, involving public loans to the amount of ten millions of dollars, where the government has carefully selected its own language, it can be permitted to violate the clearest and simplest grammatical rules, so as thereby to change materially the meaning of one of its own propositions.

Could such construction prevail, then the proposals would confine the bidder "to the depository nearest his residence, or indicated as most convenient by the Secretary." This language, as an option, would be repugnant and contradictory, unless it excluded all choice but that of the Secretary. But were it otherwise, it would practically exclude all but residents nearest the point where it would be most profitable to the bidder to make the deposit; and in this very case it would have excluded all Europe and all America, except San Francisco or its immediate vicinage. Upon this construction, if New York, Boston, Philadelphia, New Orleans, or Europe, should have bid twenty per cent. premium for this loan of ten millions of dollars, insisting on the right of deposit at San Francisco, and the citizens of that city had bid par only, the latter must have been accepted, although involving a loss of two millions of dollars to the government. Such never was the intention of the Secretary, or the true interpretation of these proposals. Indeed, especially in a matter so vitally affecting the public *revenue*, it may well be doubted whether such a discrimination between different States and citizens might not violate the letter or spirit of one or both those clauses of the Constitution of the United States which declare that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." And also that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The public loans constitute a part of the public revenue, and no regu-

lation can be made which would give any preference to San Francisco over New York; and if a citizen of the State of California could make these deposits in San Francisco, how could a similar privilege be withheld from the citizens of every other State?

All the public depositories constitute the treasury of the United States; and this is not the case of a *transfer* of public money already in the treasury, but the payment of money into the treasury, derivable from one great source of revenue, the public loans. The question is, can such payments, including the corresponding right to subscribe for public loans, be confined by regulations giving a decisive preference to the citizens of a single State or city? Independent, however, of the unconstitutionality or inexpediency of any such regulation, it is clear to me, under these proposals, that, after a bid had been "*accepted*," such bidder had the right to select the depository nearest to him, or any other which he might deem most convenient.

And this view is shown to be correct by their 4th provision, which states, "that certificates of stock, payable to successful bidders, will be issued for the amount of the *accepted* bids, upon the certificates of deposit, to the credit of the Treasurer of the United Stated, WITH THE DEPOSITORIES OF THE UNITED STATES." This does not exclude, but positively includes, the depository at San Francisco.

R. J. WALKER.

To the Committee on the Judiciary of the Senate of the United States:

GENTLEMEN: In addition to your memorial which has been referred to your committee, we beg leave to submit the opinion of the Hon. Robert J. Walker, and also the argument of our counsel, Joseph B. Stewart, esq. Permit us also to add, that when an opportunity is given to us, by your honorable committee, we shall be able to show that the denial of our right to deposit at San Francisco, and the illegal requirement of us to place the money at other depositories, have caused an actual loss in the difference of the price of our bid, which was induced by the reason of this privilege, and the actual sales of the stock on one million five hundred thousand dollars, being about $39,000. This is wholly exclusive of the loss of the profit which our contract secured to us by a deposit of our accepted sums at San Francisco. We did not think it essential to encumber our memorial with a minute account of our actual loss, as we felt assured that time would be granted us to furnish the vouchers whenever the legal points should be disposed of.

Very respectfully,

SWEENY, RITTENHOUSE, FANT & CO.

Before the Committee on the Judiciary of the Senate of the United States.

IN THE MATTER OF SWEENY, RITTENHOUSE, FANT & CO.

Argument for claimants.

By leave we respectfully submit to the committee the following considerations of law and fact:

The legal points involved are very simple when the facts are understood; and to arrive at once at the material points by which the rights of the claimants are to be governed, we will take for granted:

1st. That the act of 14th June, 1858, was passed, authorizing the issuing of the ten millions of stock.

2d. That the Secretary of the Treasury did advertise, under date of 17th December, 1858, for sealed proposals for the same.

3d. That Sweeny, Rittenhouse, Fant & Co., did bid for, and were awarded three millions of said stock, being nearly one-third of the whole, at a premium of $2\frac{89}{100}$ per centum.

The question is, what were the terms of the contract by which such bid was made and accepted? To arrive at this no other facts can be considered except the plain terms of the written proposals, and such immediate considerations and facts as are directly connected therewith, but which cannot be admitted to vary the terms of the written proposals, which is *the* contract, either in letter or spirit.

The terms of the written proposals are verbatim as follows:

"*Proposals.*

"TREASURY DEPARTMENT,
"*December* 17, 1858.

1st. "Sealed proposals will be received at this department, until 12 o'clock noon of Monday, the 24th of January next, for ten millions stock of the United States, to be issued under the act of 14th of June, 1858. Said stock will be reimbursable in fifteen years from the 1st of January next, and bear interest at five per centum per annum, payable semi-annually on the first days of January and July of each year.

2d. "No bid will be received below par, and none for any fraction of one thousand dollars. *No bid will be considered unless one per centum of the amount is deposited*, subject to the order of the Secretary of the Treasury, with a depositary of the United States, whose certificate of the same must accompany the bid. *In all cases the bids must be unconditional*, and *without reference to the bids of others*, and *must state the premium offered therein.*

3d. "The sealed proposals should be endorsed on the outside of the envelope, 'Proposals for Loan of 1858,' and be addressed to the Secretary of the Treasury, Washington, D. C. *The sums which may be accepted from any bidder* will be required to be paid in the depo-

sitory of the United States nearest to his residence, *or indicated as most convenient by him.* Should bids be accepted by parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans.

4th. "Certificates of stock for sums of one thousand dollars each, payable to the successful bidders or bearer, with coupons of semi-annual interest from the first of July next, also payable to bearer, attached thereto, will be issued for the amount of the accepted bids upon the certificates of deposit to the credit of the Treasurer of the United States with the depositaries of the United States. The stock will in all cases bear interest from the date of such deposit. The interest from that date to the 1st of July next will be paid to the successful bidder, or his attorney, by the depositary where the deposit was made.

5th. "Successful bidders will be required to deposit the principal and premium of their accepted bids on or before the 15th of March next.

"HOWELL COBB,
Secretary of the Treasury."

The first paragraph above quoted announces to the world what the Secretary of the Treasury is going to do, and his authority for doing it—that he is going to issue "*ten millions stock of the United States, under the act of 14th of June*, 1858," and invites the capitalists of the world to bid for the same.

The second and third paragraphs tell the bidders what they *shall* and *shall not* do. They point out the door through which they must come to the treasury with their respective bids, and the conditions precedent, by the observance of which they can alone be admitted. Thus:

1st. "*No bid will be considered unless one per centum of the amount is deposited.*"

2d. "*In all cases the bids must be* UNCONDITIONAL;" and

3d. "*Without reference to the bids of others.*"

4th. Should be endorsed, "Proposals for loan of 1858," and be addressed to "the Secretary of the Treasury," &c.

5th. "*The sums which may be accepted* from any bidder will be required to *be paid in the depository of the United States nearest to his residence*, OR INDICATED AS MOST CONVENIENT BY HIM."

The four first named conditions and stipulations apply to the bidder. They show what he is to do before his bid "*will be considered.*" Any departure on his part from these specific prerequisites will preclude him from being regarded in considering and awarding the bids. As the bid of the claimants was "considered," and near *one-third* of the *whole loan*—three millions—was awarded to them, proves that they did comply with all the conditions proclaimed by the Secretary.

The fifth stipulation is the only one in the whole contract or "proposal" which confers any choice of action on the bidder. What is it? Why, that when he has done all that is thus required of him to make his bid acceptable, he may, if a *resident* bidder, deposit "*in the*

depository of the United States nearest his residence, or INDICATED AS MOST CONVENIENT BY HIM." This, and nothing else, is left to the choice of the citizen who is about to assume an onerous obligation, and is permitted to select—to "*indicate*"—the "depository of the United States" "as *most convenient*" to meet its requirements.

Is not this language, "*indicated as most convenient* by him," too plain, too conclusive, as well as too important in its bearing on the mind of the bidder, to be overlooked? Is it not this very phrase and stipulation of all others that would induce the citizen to cast his eye over the whole country, and, seeing the point where exchange or other considerations would be in his favor, rate his bid accordingly? Certainly it is; and, any judge or jurist who will dispute it, may, with equal propriety, say that the deposit of "*one per centum*," or that "*the bids be unconditional*," could have been dispensed with by the bidder, and still left him entitled to his bid.

That it is the settled, legal, and authoritative mode of construing a covenant, contract, or stipulation, requiring particular things to be done, in such way as to give not only effect to each and every provision, but that which is most obvious in its common sense meaning, is a rule of law as well as reason, too well known to the intelligent jurists who compose this committee, to be offered to be verified by reference to the authorities. It is a principle which marks its way from the first text-book to the report of the case last adjudicated, where such question is discussed or involved. It is the only rule which can preserve the integrity of written stipulations, or prevent the plainest covenants from becoming a mere *web of words*, to be filled with whatever the caprice or design of the contracting parties, or one of them, may choose to imply.

The Secretary of the Treasury, we have seen, advertised according to law for *the ten millions* loan. Like the merchant offering his goods in the market, he declared the rules according to which he would, at a particular day, vend the government stocks, and asked persons to come and buy, and declared, as an inducement to the *resident* bidder, that he might pay at the depository "*indicated as most convenient by him.*" Sweeny, Rittenhouse, Fant & Co., viewing this delegated right to "INDICATE" in the face of the many restrictions preceding it, said, we will bid the large premium of $2 89 for *three millions* of this loan, and having the right, by this proposal upon its face, to select our depository anywhere in the United States as "*most convenient*," will deposit at San Francisco, and make our profit on the return exchange; complying with all the terms of the contract, paying into the United States Treasury thirty thousand dollars as the guarantee of their good faith, offer the $2 89 premium as the price of their privilege, and *three millions* of the stock is awarded them. They then say, San Francisco is "the depository of the United States" "*most convenient*" for us; we will deposit there. The Secretary says, no, you shall not deposit at San Francisco. They ask why. Because "the department does not require funds to be deposited with the assistant treasurer at San Francisco."—(See letter 29th January, 1859, page 13 of memorial.)

Before the Secretary could rely upon or successfully urge such

grounds as the above, for refusing these bidders, or any others, the right to deposit as proposed, he should have looked to his "*proposals,*" and seen whether he had made any such reservations. He should have seen whether he excluded San Francisco, or had stated the bidders might deposit in "the depository" "nearest their residence or *indicated as most convenient by them,*" PROVIDED "the department required funds to be deposited" at such place. This the Secretary did not do, and in the absence of such exception or restriction appearing in the face of the proposals, the language and terms stated in them must have their natural force, and carry the right of the bidders to deposit at San Francisco or elsewhere, and it is an arbitrary interpolation of conditions, of a material character, not named in the terms accepted, and which, if admitted, operates to destroy all the objects the parties had in bidding so large a premium, and is in the strictest sense of the word an absolute violation of their rights.

Seeing then how important a correct interpretation of this part of the Secretary's "proposals" becomes in settling the question in dispute, we ask leave to present this controlling sentence in a more analytical shape, and for convenience restate the language used by the Secretary in full:

"*The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him.*"

Upon the simple reading of this clause in the "proposals," (and which is the only contract between the parties,) two alternate rights are announced to the resident bidder.

1. He may, if he chooses, pay in the depository nearest his residence, wherever that may be; or,

2. He may pay in any other "*indicated as most convenient by him,*" whether it be in Boston, New Orleans, or San Francisco. Will these two plain alternative rights and privileges, as named in the letter of the proposals, be seriously disputed by any intelligent mind? And if the successful bidder had this choice to govern him at the time he made his bid, at what subsequent stage of the proceedings, and by what authority was he deprived of it? And could he be so deprived, unless upon a reconvention, wherein he had an equal chance to accept or refuse the newly imposed conditions? Had the language fixing the place of payment stopped with the words "will be required to pay at the depository of the United States nearest his residence," then no such question could arise; but when you add, "*or indicated as most convenient by him,*" does it not carry him to any depository that suits that convenience? If not, then why was the subsequent clause, just quoted, put in? You may strike out either clause, and it still leaves the sentence complete. Omit the words "*nearest to his residence, or,*" and see how it will read, thus:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States *indicated as most convenient by him.*" BY him, and not TO him—the *bidder's* convenience, and not the *Secretary's,* is thus plainly guaranteed; and how is it possible to be denied? Is it not impossible to do so, unless you

ignore California as a State in the Union, and deny that San Francisco as a "depository of the United States?"

Suppose Sweeny, Rittenhouse, Fant & Co. were citizens of the State of California, and, making the same bid, had been awarded three millions of the loan, would the Secretary have allowed them to deposit the whole or any part of it at San Francisco? If so, why? He needed no money there "*on account of the loan;*" and though "nearest to his residence," as well as "indicated as most convenient by him," still the reason and the rights of the Secretary were just the same—and if proper in the one case must be proper in the other—and thus enable him to drive the bidder from the Pacific to the Atlantic shore to make his payment. Or if it is conceded, as it must be, that, as citizens of California, they could deposit at San Francisco, why have they not the same rights, neither more nor less, as citizens of the District of Columbia?

Or, again: Suppose, as citizens of California, the same parties, or any others, had made the same bid, and offered to deposit in New York, could the Secretary say no, you must deposit at San Francisco, because "*the Department does not require funds*" at New York "*on account of the loan,*" and I want the money in California, which is nearest to your residence. And if such reasoning or ruling is admissible in the one case, must it not be so in the other? Are not the places equidistant apart? And if such action can be applied in either case, what becomes of the stipulation, "indicated as most convenient by him," the bidder? Or were these important words put in the proposals to mislead and deceive the public? The use proposed to be made of them in this case has palpably the latter effect.

But believing that a fair interpretation of the "proposals" under which these parties made their bid is all that is desired, we will look a step further, as to what is the proper meaning of the words "*or indicated as most convenient by him.*" Do these words mean a mere *geographical* or a *financial* "convenience?" In the first place, if the former is to be claimed as their meaning, then the stipulation is wholly superfluous, as they confer no additional privilege on the part of the bidder, as the preceding words, "nearest to his residence," had bound him to such depository, and left him no convenience to be "*indicated.*" But can the words have a geographical meaning at all? We respectfully insist they cannot; that when the bidder was told he might select the place "indicated as most convenient by him," it meant, and does mean, his *financial* convenience, and nothing else; and that such financial convenience could extend to any public depository of the United States, unless there were words precluding any particular one, which we have seen is not the case. For such purposes, and all others, as held by the Supreme Court, the United States Treasury, as to its government and sovereignty, is presumed to be in each and every place alike; and when for any purpose this broad and essential interpretation is to be precluded, apt and precise words of limitation must appear. In the absence of such limitation the right of the *accepted bidder* in this case is coextensive with this ubiquity and omnipresence of the Treasury itself, and is solely a financial right and convenience irrespective of geographical lines or locations. The bidder may live

in Maine, and it being his *convenience* to deposit at New Orleans, he has the right to do it. He may live in Texas, and if it be his convenience to deposit in Boston, his right is unquestionable. Or he may reside in Washington, and finds it to his *convenience* to deposit in San Francisco, and while bidding under the proposals before us, has the unqualified right to deposit there, or else he has no right to "*indicate*" either choice or "*convenience*" in the premises; and hence the inserting of such words, however unintentionally, was to draw the bidder into a high rate of premium, get his $30,000 in the treasury, and then subject him to the most arbitrary and ruinous exactions.

In interpreting these proposals, the words "indicated as most convenient by him," while they have no reference to locality, have every reference to *profit*. It is the latter consideration which will make the bidder offer a higher or lower premium, and in this case caused Sweeny, Rittenhouse, Fant & Co. to offer $2 89 per cent. premium for three millions of that loan, the very highest rate offered for such a large amount, or else it could not have been awarded to them. They had San Francisco in view as the place "indicated as most convenient by them" where they could make a profit, the approximate object of their bid; and the Secretary had no earthly right, under his solemn contract and inducement held out to them, to deprive them of their just and legal rights in the premises.

That Sweeny, Rittenhouse, Fant & Co. did bid with reference to paying at San Francisco is not to be disputed, when it is shown that though this three millions of the loan was only awarded them on the 25th day of January, 1859, they, as soon as four days afterwards, to wit, the 29th of that month, made formal application, or rather gave notice, that they desired to pay at that depository, or, in the words of their contract, "indicated" San Francisco "as most convenient" for them, as is proved by the letter of the Secretary of that date, (January 29, 1859,) refusing to allow them to pay at that place.—(See page 13 of memorial.) They persisted in pressing their right to deposit there, but are as often refused for alleged reasons, which we will consider presently. But certain it is, the contemporaneous acts of the parties, which is ever the best and most reliable evidence of intention, prove conclusively that these bidders both understood and claimed they had the right, and made their liberal bid in faith of the right, to deposit and pay at San Francisco.

What could induce these men to bid $2 89 for three millions of stock, if they did not suppose they saw the place where they could turn it to account and make a profit? The stocks were not at a premium such as to justify such bid, if to be paid at any of the Atlantic depositories. No margin of profit was in sight, or even possibility against loss, unless it was to pay at San Francisco, and which would have paid them a profit, as will soon be shown.

Will it be said by any one that the parties should have made their bid payable at San Francisco? If so, let him cast his eye back to the specific directions given by the Secretary, that "*in all cases the bids must be unconditional.*" A bid saying, "We will take three millions of the stock, payable at San Francisco;" or, "provided we may deposit or pay at San Francisco," or any words to this effect, would

have been a positive *condition*, stated on the face of the bid, and thus have prevented it from even being considered; for "in *all* cases the bids must be unconditional, *and without reference to the bids of others.*" The latter prohibition is distinct from the former, and means to enlarge its effect by precluding *all conditions*. In the face of the proposals, the parties would have the same right to say, "We will take three millions at $2 89, provided any one else bids as much," as to say, "We will take three millions, provided we can pay at San Francisco." The one is not more nor less a condition than the other, and both absolutely prohibited by the terms of the proposals. If the proposals had directed the bidders to state where they would wish to pay, it would have been their duty to name the place; but in the absence of such a direction, and all *conditional* bids being excluded, it was neither the duty nor the right of the bidder to name the place, but must have vitiated the bid in which such a condition appeared. In addition to these controlling facts, it would have been folly in the bidder to name a particular place, when, by the terms of the proposals, all "depositories of the United States" were open to him, either that "nearest to his residence," or the one "*indicated as most convevient by him.*"

Besides this, too, it must be observed that no one had a right to take steps towards *indicating* any place of payment till his bid was accepted—till he was a successful bidder, and the amount awarded to him. He then had a right to "indicate" the place of payment most convenient to "him," which it is shown these parties did do immediately after their bid was accepted.

In the letter of the Secretary to Sweeny, Rittenhouse, Fant & Co., of January 29, 1859, refusing to accept their payment at San Francisco after they offered to pay, thus he says:

"I beg to state that the department does not require funds to be deposited with the assistant treasurer at San Francisco on account of the loan," &c.

From this it would be inferred the department did not require any funds at that place.

The letter of the Secretary of War to these gentlemen, touching the same subject, under date of November 30, 1859, gives a little different reason from this, as derived from Mr. Cobb's statements. He says:

"Mr. Cobb stated to me, as well as I remember, early in February last, that, with every disposition to oblige you, he did not feel authorized to grant the request, *because he had already* made an engagement with other parties to transfer to the Pacific coast such funds as his department needed there."—(See letter, page 13 of memorial.)

By referring to the letter of Wells, Fargo & Co. we find some important evidence bearing upon this subject. They say:

"We beg leave to state, that the contract between ourselves and the Secretary of the Treasury for exchanging coin with the assistant treasurer of the United States at San Francisco, for transfer drafts drawn upon the assistant treasurer of the United States at New York, *was concluded February* 5, 1859. The contract *dates* from *January* 29, 1859, and will continue till January 29, 1860.

"*The premium paid the government under this contract is* $2 30 *per* $100."—(See page 15, memorial.)

Now, while this evidence proves the fact of such arrangement being made, it shows the error of the statement that no funds were needed there at the time, or that any "engagement" was "made with others" to place such funds at San Francisco when these parties selected that depository as their place of payment under their bid. It shows that on the 29th of January these parties were denied the right to deposit at the place named, as the department required no funds, &c.; and that on the 5th of February, just *seven* days after this refusal, a private contract was made with Wells, Fargo & Co. to place "*funds*" there; and what is still more significant is, that that contract was dated back to the 29th of January, the very day these parties were refused their stipulated right to "*indicate*" the depository at San Francisco as their place of payment. It is therefore shown that "*funds*" were "*required*" at that place, and that no "engagement" was made when these gentlemen applied.

But a still more important fact is shown by this evidence of Wells, Fargo & Co., which bears directly upon the rights of the parties before you, and proves wherein they would have made their profit had the Secretary not have deprived them of the rights and privileges which he tendered in his "proposals," and which they fairly purchased. Wells, Fargo & Co., speaking of their contract of the 5th February, say:

"*The premium paid the government under this contract is* $2 30 *per* $100."

On the 25th of January, just ten days earlier, Sweeny, Rittenhouse, Fant & Co. "paid the government" the larger sum of $2 89 per $100 for this same privilege, being 59 cents per $100 more than Wells, Fargo & Co. paid. They did more; they at the same time deposited $30,000 as a guarantee and forfeit that they would comply with their contract, looking solely to their right to pay at San Francisco, and thereby enjoy the profits in exchange which would enable them to stand the high rate, $2 89 per $100 on the *three millions* awarded to them, little supposing the Secretary would trade away the same privilege by private sale at reduced rates to other parties. This evidence proves the whole *injury* perpetrated upon those parties. It was an error in the Secretary not to *exclude* San Francisco in the "proposals" if he meant to reserve it for private sale, or to sell to Wells, Fargo & Co. privately for $2 30 what Sweeny, Rittenhouse, Fant & Co. paid publicly $2 89 for. Had they known of the Secretary's contemplated private sale, he would not have got their public bid at the rates he did; and whatever merit such an act may acquire on the score of gain to the government in this case, it more than sacrifices by the impeachment of its good faith and consequent losses in all succeeding transactions. Had such a private contract been made before the proposals were advertised, or the bids put in and accepted, it might wear a less exceptionable feature; but when it was done after the proposals were made, without restriction or exception as to places of payment, and even after the parties "indicated" San Francisco "as most convenient," and the contract dates back upon

that very day, and still no notice given to these *bona fide* bidders at so high a rate, it leaves the action of the Secretary too clearly erroneous, too bold to be defended or justified.

Nor does the Secretary in the least vindicate his cause by his letter to these parties of the 26th September, 1859, (see pages 15, 16, of memorial.) He only informs them he had refused others to deposit at San Francisco, but does not show that he had the right to do so. One violation of law, though often a *precedent* for, cannot *justify* a second, or a third ; nor does the showing of a multiplicity of victims, by a high public functionary, relieve the wrongs done to one ; and by no means could their secret agonies serve as a warning, that the public "proposals" of the honorable Secretary did not mean what their plain English read. It is true, he says that the matter of his former refusals was discussed "*in financial circles at the time*," and that "it was presumed that all bidders for the second instalment were aware that no speculation in exchange could be made by deposits there." It *would* perhaps have been better for these gentlemen to have sought the clamors and traditions of the past, than to have relied upon what the Secretary wrote and signed, or to have learned from the misfortunes of others that "*no* speculation" or profit could be made by heeding the proposals for a public loan, as published by a United States Secretary of the Treasury. Or does the Secretary mean that "no speculation" shall be made by a deposit at San Francisco, but may be permitted by making payment at any other depository?

On the other hand, however, it may be claimed that had the Secretary, being a party to all these demands, refusals, and complaints, only been pleased to make them part of his written proposals, instead of what he did write and publish, the true character of his dealings could have been better understood, and nobody deceived. This statement of the Secretary, though with others, shows that all preceding bidders interpreted his language the same as Sweeny, Rittenhouse & Fant did, and that he alone, as a party in each case, took a different view. The motive which prompted him, however, is equally obvious.

The Secretary seems to put forth the assertion "that no speculation in exchange could be made by deposits there" by the bidders, as though he had a motive to prevent such a result. We believe it is the object of all capitalists to make a "profit by exchange" in some shape when they bid for a public loan, and equally the expectation of the government that its citizens will make some profit in bidding for its loans. But when the government shall teach the people that, while tendering them its loans, it will seek to embarrass and cut off all chances of profit, its stocks will not often bring $2 89 premium in the market, or find a purchaser at any price.

And we will here add, it is the pursuit of the capitalist and banker to seek to make money by exchange from one point of trade to another ; but we were not aware till now that the government was engaged in that business on its private account. Nor can we see what precise account will be opened for this "$2 30 per $100 premium" received and now being received from Wells, Fargo & Co., and keep within the strict letter of the 22d and 23d sections of the sub-treasury

law, the latter of which says, in speaking of the rules and regulations issued by the Secretary of the Treasury:

"But, in all these regulations and directions, it shall be the duty of the Secretary of the Treasury to guard, as far as may be, *against those drafts being used, or thrown into circulation as a paper currency or medium of exchange.*—(See 5th vol. Stat., page 391.)

Now, when the Secretary, instead of guarding against such a use of the public funds, brings the government into the market as a vender of exchange on its private account, as is shown to have been done in this case, it is hardly consistent with the letter or spirit of the sub-treasury law just quoted; and especially must it bear such aspect when at the very time Sweeny, Rittenhouse, Fant & Co. had bid and paid $2 89 per $100 for that very exchange, and were pressing for the right "*to transfer to the Pacific coast such funds as his department needed there;*" and hence there was no impending necessity for the act. If such is proper, the government had better go into the banking business, and put all its drafts "*in circulation as a paper currency*, or medium of exchange," both of which are prohibited.

But we have digressed further than we intended upon points, perhaps, not wholly material to the issue involved. The question is to be determined upon the right of Sweeny, Rittenhouse, Fant & Co. to deposit and pay at the United States depository at San Francisco; and we cannot see how it is possible that it can be seriously disputed when the simple terms of the proposals are read, aside from any extraneous proof, as we have hereinbefore labored to show. The words contained in the proposals are sufficiently plain and unambiguous within themselves to determine the matter, and this construction has been given them by the leading financial capitalist of the country.

The Secretary shows, as we have seen, in his letter of the 26th September, 1859, (see pages 15, 16, of memorial,) that every capitalist took the same view as do the parties in this case. Great pains have been taken to consult with those whose opinion ought to weigh, and they all concur in the principles of construction here claimed. As a specimen, we here insert one of the letters received from a well-known and responsible banking-house in New York, whose opinion was asked. It says:

NEW YORK, *December* 17, 1859.

MESSRS. SWEENY, RITTENHOUSE, FANT & CO.,
Washington, D. C.:

DEAR SIRS: Your esteemed favor of 10th instant was duly received, enclosing your memorial to Congress for damages caused you by the Secretary of the Treasury in the exactions he made upon the government loan of December, 1858.

We deem your position as clearly correct, and your rights unquestionable. *We* carefully read the proposals for same loan and bid for $100,000, payable in San Francisco, and $60,000 were awarded to us at a premium of 2 $\frac{60}{100}$; made our deposit and forwarded it to the Secretary in due course, and were amazed at the receipt of a letter, in reply, stating that payments *could not* be received in San Francisco.

We went into correspondence at once with the honorable Secretary, showing plainly the rights of bidders, and more particularly our rights, as we had bid *for our San Francisco house, and had the money there to pay*, at the depository nearest our residence, &c., but it was of no use; and, in answer to our letters, we only received laconic replies, referring to the first refusal of the Secretary.

Our senior then took advice of leading financial parties in this city, and found their opinion unanimously concurring with his own, and thus fortified, waited on the honorable Secretary in person, but of no avail. No arguments were used in answer to ours, (which could not be rebutted,) but the reply, that the department did not want the money in San Francisco, had so advised us and other parties, *and would not receive it there*, and that further discussion was unnecessary, as the Secretary had made his decision, and would not alter or reconsider it.

This gave such a shock to our confidence as to the good faith and management of the department, that we determined to at once rid ourselves of the stock; and making good the payment in *New York*, as *demanded*, (instead of San Francisco, from whence me had to remit our funds,) we disposed of the stock without delay, and at a considerable loss. We know of no temptation now that would induce *us* to bid on a treasury loan; for when plain English language is made to mean nothing, and plain contracts hold nothing, except on one side, there is neither satisfaction nor security in business.

We return your memorial, as requested, and remain,

Yours, truly,

WM. T. COLEMAN & CO.

The language and meaning of this letter need no comment. It shows not only that there can be no misunderstanding as to the language used by the Secretary in his "proposals," but the consequences which must result to the discredit of the good faith of the government in the public mind by permitting such abuse of it.

We will not discuss the measure of damages due to the claimants till the question of their right to recover in the premises is definitely settled. When that is done, and should it be done according to the plain principles of law and fact adduced, the proper measure of relief will be easily arrived at.

Begging pardon for the length of this argument, we respectfully invoke the serious consideration of the committee to the several questions we have aimed to submit. Its importance cannot be too highly estimated, as its effects must reach and influence the public confidence in all future negotiating of public loans.

All of which is most respectfully submitted.

JOS. B. STEWART,

Counsel for Sweeny, Rittenhouse, Fant & Co.

PHILADELPHIA, *January* 20, 1860.

My opinion has been requested as to the right of any successful bidder for the loan under the act of Congress of the 14th June, 1858, and the proposals of the Treasury Department of the 17th December, 1858, to select the place of deposit.

This question is to be solved by reference to the language of these proposals on this subject, which language is as follows:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by him. Should bids be accepted by parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans."

A discrimination is here made between the resident and non-resident "bidder," the latter being required to deposit in one of four cities named, at his option, but the former may select "the depository of the United States nearest to his residence, or indicated as most convenient by him." Now, to whom do these words "by *him*" refer? If to the Secretary, then the resident bidder is in a much worse condition than the non-resident, for whilst the latter may select at his option any one of the four great public depositories, the resident bidder has no such option, but must make his deposit at any point indicated by the Secretary of the Treasury. Such a discrimination against our citizens (even if legal) was never intended by the Secretary, and, if adopted, would necessarily exclude all domestic competition, greatly reduce if not expunge any premium on government loans, and throw them all into foreign hands at low rates, to be fixed substantially in future bids for such loans, by combinations of foreign capital, leading to consequences most disastrous to the country. The true, if not indeed the only legal course, is to make no discrimination between bidders in proposals for public loans. If the sentence were thus construed, it would read thus:

"The sums which may be accepted from any bidder will be required to be paid in the depository of the United States nearest to his residence, or indicated as most convenient by *the Secretary*." If this were so, the citizen of Oregon may be compelled to deposit in New York, or of New York in Oregon—conditions on which the loan would never have been taken at any premium. But this would violate the rules of grammar, as well as of common sense. The term "bidder" is not only the immediate but the only antecedent to the words "*his* residence" or "by *him*." Both refer only to the "bidder." It is *his*, the bidder's residence, and not the Secretary's, and indicated by *him*, the bidder, and not the Secretary, that are clearly designated.

In the interpretation of all written instruments, the rules of grammar, which are the laws authoritatively prescribed for ascertaining the meaning of any sentence, cannot be disregarded, especially a rule so simple, obvious, and fundamental, as that the *pronoun must refer to the noun-substantive, which is its immediate antecedent*. But when, as in this case, the word "*bidder*" is the only antecedent to "*his*" or "*him*" in the *same sentence*, and in regard to the *act to be performed*, the rule becomes imperative. Indeed, it can hardly be contended that

in a most important official written instrument, involving public loans to the amount of ten millions of dollars, where the government has carefully selected its own language, it can be permitted to violate the clearest and simplest grammatical rules, so as thereby to change materially the meaning of one of its own propositions.

Could such construction prevail, then the proposals would confine the bidder "to the depository nearest his residence, or indicated as most convenient by the Secretary." This language, as an option, would be repugnant and contradictory, unless it excluded all choice but that of the Secretary. But were it otherwise, it would practically excludes all but residents nearest the point where it would be most profitable to the bidder to make the deposit; and in this very case it would have excluded all Europe and all America, except San Francisco or its immediate vicinage. Upon this construction, if New York, Boston, Philadelphia, New Orieans, or Europe, should have bid twenty per cent. premium for this loan of ten millions of dollars, insisting on the right of deposit at San Francisco, and the citizens of that city had bid par only, the latter must have been accepted, although involving a loss of two millions of dollars to the government. Such never was the intention of the Secretary, or the true interpretation of these proposals. Indeed, especially in a matter so vitally affecting the public *revenue*, it may well be doubted whether such a discrimination between different States and citizens might not violate the letter or spirit of one or both those clauses of the Constitution of the United States which declare that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." And also that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The public loans constitute a part of the public revenue, and no regulation can be made which would give any preference to San Francisco over New York; and if a citizen of the State of California could make these deposits in San Francisco, how could a similar privilege be withheld from the citizens of every other State?

All the public depositories constitute the treasury of the United States; and this is not the case of a *transfer* of public money already in the treasury, but the payment of money into the treasury, derivable from one great source of revenue, the public loans. The question is, can such payments, including the corresponding right to subscribe for public loans, be confined by regulations giving a decisive preference to the citizens of a single State or city? Independent, however, of the unconstitutionality or inexpediency of any such regulation, it is clear to me, under these proposals, that, after a bid had been "*accepted*," such bidder had the right to select the depository nearest to him, or any other which he might deem most convenient.

And this view is shown to be correct by their 4th provision, which states, "that certificates of stock, payable to successful bidders, will be issued for the amount of the *accepted* bids, upon the certificates of deposit, to the credit of the Treasurer of the United States, WITH THE DEPOSITORIES OF THE UNITED STATES." This does not exclude, but positively includes the depository at San Francisco.

R. J. WALKER.

To the Committee on the Judiciary of the Senate of the United States:

GENTLEMEN: Having, as we sincerely believe, established our right, under the proposals of the Secretary of the Treasury, to deposit the amount of our loan at San Francisco, it may be essential to exhibit the character of the evidence adduced by us to sustain the allegation that we did *indicate* that *depository* as *most convenient to us*, and expressed a desire to pay at that place. Before we proceed to refer to this proof, it may be proper to remark that there is a manifest difference in the indication of the place of deposit and the payment of the money. They are distinct acts. The indication of the place was *one act*, and was to precede the payment at that place. The words of the proposals are "that the sums accepted of any resident bidder will be required to be paid at a depository of the United States nearest to his residence, or indicated as most convenient by him." These words clearly import that this indication and payment were not to be concurrent acts, and were not intended or required to be performed simultaneously. One might therefore be performed, but not the other. A bidder might indicate a place, and yet not pay. This was to be the final act of the bidder. The first act, then, to be done by the accepted bidder was to indicate the United States depository which "*suited his convenience*," and having done so, then, in the words of the proposals, he was "required to pay." The proposals do not prescribe to the bidder any particular mode, manner, or form, either *written* or *oral*, by which the indication was to be made. It was, then, the legal right of the bidder to make it as he might decide, either in writing by his agent verbally, or by himself, so that he had evidence of the fact. It was a mere notice to the Secretary, and required his order to the assistant treasurer to receive it, and nothing is clearer where by a written contract an act is to be done, by a party to it, such as is contemplated by the proposals, and the words of the contract do not require it to be done in *writing*, a written communication is not then necessary, and the party can select his own way of doing it. All that can be required of him is to execute it in such a way as to inform the adverse party. This is a general rule of law which binds the government as effectually as it does the individual. What, then, was done by us to apprise the Secretary of this indication? It was not only communicated to him in writing, but also verbally by a third party. This is not merely established, but it is conclusively shown by the highest degree of evidence—the admission of the Secretary.

Immediately after our bid had been accepted, and prior to the letter we addressed to the Secretary on the 27th of January, 1859, Mr. Fant, of our firm, had an interview with the Assistant Secretary of the Treasury, and then indicated to him our intention to deposit the amount at San Francisco. He was surprised to hear from this high officer that the Secretary of the Treasury had decided that we had no right under the proposals to pay the money at that depository. We dissented to such a construction of our rights. These facts will be fully sustained by the Assistant Secretary, should such collateral testimony be deemed at all essential to fortify the positive independent written evidence in the case. Goaded by this startling information, how did we act?

The Secretary had under lock and key $30,000 of our money. He would not, as we were told, receive payment at San Francisco. Notwithstanding this information, we addressed him a very respectful and courteous letter on the 29th of January, 1859, and indicated our desire to deposit the money there.

We never supposed that the use of courteous language, much less that a very deferential and becoming mark of respect to so high an officer, and so eminent a gentleman, could weaken the substance of the indication, or deprive us of our rights under the contract.

This letter proves that we entertained a different view from him of our right to deposit at San Francisco, and that we desired to do so; and that this indication by us was made in that letter, in the sense and meaning of the proposals, is incontestably shown by his letter in reply. Duncan, Sherman & Co.'s letter to us show that, soon after the award, they received a visit from Mr. Sweeny, of our firm, on the subject of depositing money to the credit of the United States at San Francisco. They say: "We should then have been quite ready to have made an arrangement with you to make the payment there for your account on the loan." This shows our sense of our right to indicate that place under the contract, and had undertaken such measures as would enable us to do so. We accordingly, on the 29th of January, 1859, addressed the Secretary the letter referred to. Did it convey to him that fact? How did he understand it *at that time?* Did he consider it as pointing out that depository as most convenient to us? If he did so understand it, then we complied with our contract, as regards the indication of the place. Now, does not his reply to that letter, on the *same day*, admit that he so understood it? What are his words? "I beg to state that the department does not require funds to be deposited with the assistant treasurer at San Francisco on account of the loan, and of course cannot give the authority requested in your letter." What did we, in our letter to him, express a willingness to do? Deposit at San Francisco. In this sense he understood it, and he proves that such a deposit at San Francisco, *on account of the loan*, could not be done, as he would not give the authority as requested by us. His proposals had, as we say, conferred this right. Does not this establish the fact that San Francisco was indicated to him by us? What escape is possible from this inevitable result? No subsequent glosses can release the admission by his letter of this positive indication, on our part, of that depository to pay the loan. The Secretary had in fact decided not to receive the money there, and, therefore, would not give us the authority required. The indication on our part was acknowledged by him: for *at San Francisco it was* that he said he did not require funds and there we proposed to deposit funds, by paying our loan. Was it possible to have indicated a depository in a clearer or better way? It was *sufficient*, because he understood it. We could not have paid before we indicated the depository. His refusal, therefore, to accept the money there, after that indication, was a palpable violation of the contract. Such a determination had long before been made. Did he ever instruct the sub-treasurer there to receive payment on account of the loan? If that be not so, no payment could have been made, and of course no certificates could have

heen obtained from the sub-treasurer there. The certificates, too, could not precede, but must have been issued after the indication had been made, and the money paid. The denial of the rights of successful resident bidders to indicate the place is also clearly established by the letter of Wm. T. Coleman & Co., embraced in the argument of Jos. B. Stewart, esq. It was not, then, any captious objections, urged at *that time* by the Secretary in his letter to us of the 29th January, 1859, to the form, manner and mode of our indication of San Francisco as the place of payment, that caused him to refuse to accept of us payment there, but his fixed purpose not to suffer the resident bidders to pay at that place. This fact is fully declared in his letter to us of September 26, 1859, (marked H, in our memorial.) This letter, when considered in connexion with that of Coleman & Co., fixes it beyond all possible doubt. It may also be observed that when we indicated San Francisco, on the 29th of January, 1859, the government did require funds at that point, and the Secretary was so much in want of them that he was driven to the uncommon act of entering into a contract for that purpose with Wells, Fargo & Co., on the 5th February, 1859, and of *ante-dating* it to the 29th January, 1859. This appears from the letter of that firm, (marked G,) *in our memorial.* So that the words of the proposals are not only rejected by the Secretary to effect this purpose, but his own want of funds is actually established by his own act and deed, and is utterly irreconcilable with the reason given in his letter of the 29th of January, 1859.

We then, early in February, 1859, indicated to him, through the Secretary of War, our desire to pay at San Francisco, and we endeavored to satisfy him of the fact that funds were wanted, as is clearly shown by his contract with Wells, Fargo & Co. This agreement proves that the Secretary not only required them *at that time*, but that he would require funds there during the *whole* year. We again aver that his proposals did not exact any particular form or way, either verbal or written, of indicating the place.

If the information conveyed to the Secretary notice of the fact in any mode, we then had fulfilled this provision of our contract.

Now, what does the Secretary of War's letter establish? "That the reason assigned by the Secretary of the Treasury to me for not acceding to your request to make your deposits in San Francisco, in payment of your purchase of United States bonds, was, that he had already made an engagement with other parties for funds on the Pacific." This letter then shows that *we desired to pay at San Francisco*, but that the Secretary would *not accede* to our request. It proves the indication by us of that depository, and the refusal of the Secretary to accept payment of us there. Not to accede is tantamount to a refusal. Now, our right to indicate, and the act itself, cannot be impaired or affected by what the Secretary considered to be a *request.*

If that expression had been objectionable, the Secretary had no right to construe it as a waiver or abandonment of a legal right, and fair dealing to us would have dictated to him the duty of apprising us of this technical and hypercritical plea. But such an objection would not be received in a court of law, much less in one of conscience. A right, we are assured, can be asserted in the form of a request as

effectually as by the utterance or use of imperious or menacing words. When a debtor is requested by a creditor to pay a debt, the demand is as legal and binding as if it were made by a notary or bailiff. Courteous words and urbane language are due to the high officers of the government. The government itself asserts its rights and presents its claims against other governments in respectful and conciliatory terms; and, as citizens, we felt bound to communicate with so high an officer of our country, and so distinguished a gentleman, in the most decorous, respectful, and conciliatory tone and temper. The moderation, then, of our communications to him in writing and by Governor Floyd did not release the government of our right to deposit at San Francisco. His reply to our letter of January 29, 1859, and also the reasons given to Governor Floyd, positively show that he did understand our position. Indeed, it would be too absurd to take the exercise of the right, the act of indicating San Francisco, as manifested by our letter, as the renunciation of that right so awarded to us by the proposals. The Secretary's reply to us proves, too, a directly adverse act on his part—his refusal to accept payment of us at that depository, and such refusal establishes the violation of that contract by the Secretary. The indication, then, by us of San Francisco, and his refusal to accept payment of us there, is placed entirely beyond all dispute by his own correspondence. This alone prevented payment by us in that depository. We had no right to proceed to make it in the face of that refusal; we could not safely have done so. The Secretary held our deposit of $30,000; he would have forfeited it had we attempted to do so in defiance of his will. The sub-treasurer would not have received it; no certificates, therefore, could have been obtained; no stock would have been issued to us, and our loss would have been overwhelming.

The Secretary, in his letter to us of the 25th of January, 1859, informed us that our bid for the loan "had been accepted under the *notice* of the 17th of December, 1858," meaning the *proposals*. These proposals required payment to be made at a depository nearest to our residence, or as indicated, as most convenient to us, on or before *the 15th day of March*, 1859. Thus that day of payment was made a material part of the contract.

Now, in our letter of January 29, 1859, we proposed to pay at San Francisco, and so informed the Secretary. We, of course, intended such payment to be made by the 15th day of March. It was the contract we offered to execute; and can it be believed that this offer thus made could be considered by any intelligent mind as a desire to defer its payment *beyond that day?* What right had the Secretary to presume or infer from our letter that we did not intend to comply with the contract by paying the amount by that day? The only presumption in law to be deduced from that letter was the rightful and legal one that the payment would be made by the day mentioned in the proposals, and not after that time. This intention incontestably appears from all our acts. The letter of Duncan, Sherman & Co. fully disclosed our design, and we actually applied, by our Mr. Sweeny, at their house in New York, to provide the means necessary for that very purpose. Our letter to the Secretary shows that we desired to deposit

the money, or a portion of it, at San Francisco; and yet, because we adopted a word synonymous with those in the proposals, and applied them in the same sense as they bore, this expression is unfairly and improperly interpreted by him to mean a different construction, and that we proposed to deposit there, not by the 15th day of March, "but within an indefinite period." We had no such idea; and the right of no individual would be secure if a party to a contract could be permitted to assail them by such a wanton and violent presumption. What, then, did we offer to do? "To *deposit the money*," as the proposals required us, by the 15th day of March, 1859. That offer was rejected by the Secretary, and he refused even to receive a part of the amount, much less the whole.

We did not, even in the most remote way, hint at an extension of the time, to enable us to effect it. The Secretary declined to accede to this offer. After this, we repeated our offer to do so early in February, through the Secretary of War. It was again rejected, not for the paltry reason, now assigned by him, that we did not intend to make payment before the 15th of March, "or in an indefinite period of time," but in both cases for the reason that the Secretary did not require funds at San Francisco. So this is a recent objection—an afterthought, and altogether incompatible with the official reasons announced by the Secretary in his letters at the time of our application. He is bound by the official objections that he gave at the time, and he has no right to impute or charge us with any intentional remissness in the efforts to deposit the money at San Francisco. But we will not dwell further on this extravagant, unauthorized, and unreasonable imputation. The fact is that we had been informed by the Assistant Secretary, before we wrote our letter of the 29th of January, 1859, of the decision of the Secretary, not to accept of payment for the loan at that depository. This decision has, in fact, been verified by the Secretary's own correspondence. The letter of Messrs. Coleman & Co., in Mr. Stewart's argument, page 12, contains positive proof of the fact. Sixty thousand dollars was awarded to them, and they notified the Secretary of their readiness to pay at San Francisco, the depository nearest to the branch of their firm, which was located there. They say, "they were amazed at the receipt of a letter in reply from the Secretary," stating "that payments would not be received at San Francisco." Here is the Secretary corroborating the statement of his assistant. Who, then, can doubt that he refused to accept payment of us on the same ground? Did he say to this firm, as he asserts in his letter to the committee, that they could pay and get the certificates of deposit from the sub-treasurer? The very reverse! "*Payments could not be received at San Francisco*," which, of course, precluded the possibility of certificates being obtained. How, then, could we be required to do a useless and ruinous act by the author of this decision, when he had refused to accept payment of even part of our amount there, although *we offered to pay the whole?* Mark the words of the Secretary! Payment *could not be received* there. By whom could it not be received? The sub-treasurer! yet, with this avowal of the Secretary, he charges us with the omission of not having tried to deposit our money there, when he asserts, in his letter to

Coleman & Co., payment could not be received; particularly, too, of us, as our application to him to do so had been refused. But this is not the only evidence to prove that it would not have been received at San Francisco. The Secretary, in reply to our letter of September 26, 1859, (marked I, in the memorial,) enclosed to us a letter of his, (marked J, in the memorial,) to Aspinwall & Co., and he relies on that *letter* to justify his refusal. Now, what does that letter establish? What are the words of the Secretary? "I must take leave to state that other parties have proposed to deposit at San Francisco, on account of their offer for the accepted loan, and this department has *decided to refuse to accept any deposit at that place on that account.* I must, therefore, decline your proposition to deposit there, and must hold the bidders for the loan to the terms of the sale in regard to any deposit at San Francisco." The department, then, had decided to refuse to accept any deposit at San Francisco. In his letter to us he says, "the phraseology of the proposals being the same in regard to places of deposit, the same reasons apply to your claim to deposit at that place." He insisted "*in holding the bidders* to the notice." This is all we required, but we desire the government, in return, to be bound by their own proposals. There were two parties to the contract who had mutual rights. They gave us the right to indicate San Francisco. We did so. Now, can any man resist all these strong admissions thus officially made by the Secretary, "that he *had decided not to receive payment on account of the loan there,*" and that we had been refused for that very reason, when he referred us to that very decision to justify his course? And yet the Secretary asserts, in his letter to the committee, "that he never declined to accept payment of us there, and that we could have deposited at San Francisco, and obtained certificates to enable us to claim compensation," which his very refusal to receive our amount at that depository rendered impossible. No further comment can be necessary to expose such an allegation. Indeed, in his letter to the committee, he states that "parties desiring to make payments there were invariably referred to their legal rights." Now, that is just what we asked, yet no such reference was made by the Secretary in our case. Did he refer Wm. T. Coleman & Co. to their legal rights? Was the declaration to them "that payments on account of the loan at San Francisco *would not be received,*" a reference to their legal rights? Did he not decline their proposition? Yet, in all cases, he gravely asserts "that parties desiring to make their payments were invariably referred to their legal rights."

So, too, he triumphantly boasts that he never defeated or prevented such a payment. Now, could any act better prevent such a payment than his decision not to receive the money at San Francisco, as announced to Coleman & Co., and fully proclaimed in his letter to Aspinwall & Co.? Surely the Secretary must remember these, his official acts, and he must well understand how fully they rebut these recent asseverations. We had then legal rights; the most important one to us was the right to indicate San Francisco as the place of payment. This we did in the letter to the Secretary, of January 29, 1859; this he declined, and he admits that he had refused to give to the assistant treasurer at San Francisco directions in advance to receive

deposits on account of either instalment on the loan. This just confirms what he announced to Coleman & Co. and Aspinwall & Co., that such deposits would not be received at San Francisco. Now, how could a deposit have been made without such an order? How could the assistant treasurer there know that we were accepted bidders, unless informed by the Secretary? If he had received the deposit, he would have had to have issued certificates that would have entitled the depositor to United States stock; and what authority had he to do so, unless specially directed by the Secretary? San Francisco was not specified in the proposals. That made it necessary to prove by such order that he was an accepted bidder; hence the reason why the proposals required the accepted bidder to indicate the depository to the Secretary, in order that he might give instructions to receive the deposit so indicated on account of the loan, and authorize certificates to be granted. It was this that induced us, in our letter, to request such authority to be granted to us, to deposit "the money, or a part thereof," at San Francisco, as that depository was not designated in the proposals, but which we had a right to indicate, and therefore a special order was essential. The Secretary, in his proposals, had given such orders, in *advance*, to the sub-treasurers at Boston, New York, Philadelphia, and New Orleans, but not at *San Francisco*, and this fact required his authority to do so.

This fully explains the phraseology and diction of our letter to him of January 29, 1859, all of which is positively confirmed by his letter to us, hereinafter cited. Now, the Secretary does, in his communication, object to the form and manner of the request we made in that letter, in which we indicated San Francisco as the depository most convenient to us. He doubts not our right to indicate that depository. What, then, is the objection relied on? We have before adverted to it, and have exposed his futile, and, we must be permitted to say, unwarrantable assertion; that having used the words *suit our convenience* to express our rights, he gives to the words a meaning altogether different from that what they literally import, and charges us with the design not to pay the money on or before the 15th of March, the day of payment named in the proposals. Here is his language: "The letter of the 29th January, 1859, was the only offer made by the firm, and that letter proposed 'to pay at their convenience,' and merely asked, as a matter of accommodation, 'to deposit them within an indefinite period.'"

Now, we insist that this averment is contradicted by the terms of our letter. What did we say? "That it may suit the convenience of the government, as well as our own, were we to deposit at San Francisco a portion of the money for the recent loan taken by us. We respectfully ask your authority to deposit the money, or a portion of it there." Does this in any way imply that it was to be done after the 15th of March, 1859, much less "in an indefinite period of time?" It was a legal right, secured by the proposals to us, proposed to be performed in a legal way. It is a positive indication that it suited our convenience to deposit the money there, and requested him to receive it there. No facilities were prayed to enable us to do so—no intimation or any expression used to intimate a desire for an extension of

time to perfect and accomplish that payment. Is our language not plain and simple? Can it be distorted and perverted from its obvious sense to justify the Secretary in this strained, violent, and far-fetched presumption? What did his proposals say? That "the accepted resident bidder was required to pay at a depository nearest his residence, or indicated as most convenient to him." What did our letter say? That it suited our convenience to deposit the money at San Francisco. What is the difference in the form of the expressions? None at all. There is no obscurity or ambiguity in this language, and it was precisely synonymous with the phrase used in the proposals, "*as most convenient by him.*" It was our convenience, as accepted bidders, that his proposals explicitly guaranteed; and yet, because we exercised this clear legal right in our letter for the purpose of executing our contract in good faith, as the notice required, the extraordinary and unreasonable charge is made, that we intended by this expression not to complete our contract by that day, "but in an indefinite period of time." We regret to be compelled to say that this charge and construction of our words do not comport with his known ability, or the proper and fair spirit of a distinguished functionary of the government, and that a calmer review of our letter must induce him to disown such miserable sophistry, as inappropriate to a just and proper construction of its language. We have already stated the reason that influenced us to request his authority to deposit the money in San Francisco, and if, as he stated in his letter to the committee, that no special order was necessary to the assistant sub-treasurer to enable us to have done so, he might, in a spirit of just and honorable dealing, apprised us that such an order was unnecessary.

What, then, was his reply to our letter? "That he did not want funds there, and could not give the authority to do so." San Francisco was not named by him in his proposals, and therefore we were satisfied that the sub-treasurer there could not receive it without his directions. This impression is now placed beyond dispute by his own official declarations. In his letter to Aspinwall & Co. he says: "I must take leave to state that other parties have proposed to deposit at San Francisco for the accepted loan, and this department has decided to refuse to accept any deposit at that place on that account;" and in his letter to us of September 26, (K, in memorial,) he states that the proposals being the same as to the places of deposit, the same reasons apply to your claim to deposit at that place. So in a letter to Coleman & Co., who proposed to pay at San Francisco, he stated that payments could not be received in San Francisco. But look at his letter, (K, of memorial,) in which he admits the fact. Such is the position of the Secretary of the Treasury, thus presented by his own official correspondence. We rest, then, all further remark as to his comments on our letter of January 29, 1859.

Now, had he given the authority to accept our money at San Francisco, it would all have been paid there before the 15th day of March, 1859, as required by the proposals. That his refusal to accept of it, and to authorize the sub treasurer there to receive it, was a gross violation of our contract, there can be no dispute. How has it operated against

us? Not merely in the loss of a large profit in the transaction, but in the subsequent loss incurred on the stock.

The Secretary cannot comprehend how he could have realized so large a profit by depositing the amount at San Francisco. Surely he ought to understand this from the gain which he has made by his sale to Wells, Fargo & Co. of all his bills on New York during a whole year, who, of course, reserved a margin for profit in their sale. This, too, was not to transfer money *already* in *the treasury:* it was to place money there by a party who was not a *debtor* to the United States. The Secretary thus made the United States a debtor instead of a creditor. That firm agreed to deposit money at San Francisco, for which the Secretary agreed to give bills, or what he *erroneously* calls transfer drafts, on the depository at New York, for which the Secretary received a premium of $2 30, thus making a profit on $3,000,000 of $69,000. Now we, through Duncan, Sherman & Co., could have realized that profit at least, yea, much more, as bills on New York averarged during February and March, 1859, a premium of three per cent., as appears from the letter of Coleman & Co., marked E, in memorial. Our gain, then, would have been $90,000, to which is to be added the saving of twenty-four days' interest, while the bills were in transitu, which would have been upwards of $10,000 on that sum.

This gain would have been wholly separate and independent of any profit on the sale of the stock, just as much so as the Secretary's speculation in these drafts, and it was that profit which induced us to make our bid at $2 89 for the stock. Neither can the Secretary understand how we could have made at this rate more than 59 cents by the transaction. This is just as easily explained. This $90,000 would have been the actual gain to us *on the sale of the drafts.* We should also have had the stock to pay our drafts at New York. Suppose that the stock had been sold at a premium of $2 62, (the Secretary says its price was three per cent.,) that would have produced $78,600. Add this to the $90,000, it will give $168,600, from which is to be deducted a premium of $2 89 paid for the stock, ($86,700,) that would leave an actual gain of $81,900, and the $10,000 interest would have made a total gain to us of $91,900. Now, all this large gain to us was alone defeated by the Secretary's refusal to comply with his proposals, when he declined to give us authority to deposit at San Francisco. This is clearly shown by the letter of Duncan, Sherman & Co., (B of memorial,) who state "that we *should have been quite ready to have made payment there for your account.*" Now, what did the Secretary mean by restricting in his proposals the non-resident bidders to the depositories at Boston, New York, Philadelphia, and New Orleans, and not the resident bidders? Why the reason of this exception, which excluded them from all others, and gave the privilege to the resident bidders to indicate and choose such depository "as most convenient to him?" It was precisely that they might enjoy every advantage arising from profit in exchange, or any other benefit, and thereby induce better offers for his stock. It would be monstrous to insinuate that he intended it as a snare to deceive his own countrymen, and to trick them out of the plain provision of his proposals, while the interest of the *foreign* bidder was *protected* by him, by being

plainly notified that he must pay at these designated depositories. Such has been the course adopted by the Secretary to resident bidders—*his own countrymen*. We charge that he inexcusably violated the contract in not giving us authority to pay, as we desired to do, at San Francisco. That wrongful act crushed our hopes, steeped us in great loss, prevented all possibility of an execution of our contract by the 15th of March, 1859, and has been the cause of his detention in the treasury of a part of the one per cent. that we deposited as a guarantee of its execution. By this *refusal alone*, and the repudiation of the contract, we were driven to seek what he calls indulgence, and obtain an extension of time. It never would have been asked but for his own illegal act. He boasts, however, of this as an *act of mercy*, and denies it was our right; and he sets up this extension as a *plea in bar* against our claim. Shall the Secretary be allowed to set up his illegal act as a protection to the government? That act cannot operate to destroy our rights, and his refusal to let us execute the contract as we proposed released us from the obligation to pay on the day fixed in his proposals. We had a right to that extension. Now, we can show that it was an actual gain to the department. It was done to accommodate not us, but *the government*. His treasury was full. He did not require the money, and by postponing the day of payment the United States saved a large amount of interest on the stock, as it was to bear interest only "from *the date of the deposit*." He had obtained his treasury-note bill; his receipts from his custom-houses were great; the post office appropriation had failed; then why pay interest on stock when he did not want the money? Had he been pressed for funds, do you suppose such extension would have been made? Did he lose or was he embarrassed by this delay? No; he gained in interest about..... $37,500 00

Had not this right been given in the proposals, we would not have been bidders, and the bidder below us, at about $1 71, would have been awarded the $3,000,000, and the government thus gained in premium by our bid about..... 35,000 00

The premium the government realized by selling our right to Wells, Fargo & Co., and the loss on freighting the surplus gold back to New York, would amount to about..... 69,000 00

Making a total gain to the government on the $3,000,000 awarded to us..... 141,500 00

It was, then, a financial benefit to him.

So much for this plea in bar, which rests his defence on the merits of his own violation of the contract which has inflicted on us such deleterious effects, and has thereby produced such a large profit to the treasury.

The Secretary has bestowed some criticism on our remark that if San Francisco had been excluded by the notice, no sane man would have bid $2 89 premium for the stock. Small sums may, then, have

brought such a price, not a large amount. Coleman & Co. say their bid was $2 60 premium. They sold their stock and lost by the operation.

It will be seen from the letter of Duncan, Sherman & Co., hereto appended, that the sale of the United States fives of 1874, recorded at the Stock Exchange in February, 1859, were made in small lots, at an average of about 2.69. Deducting forty-five days' interest and one-eighth commission, they would have netted to the seller about 1.94 premium; and to have pressed upon the market three millions of stock additional, Duncan, Sherman & Co. say "that a concession of one-half to one from the average price current during the month would have made a ready market." Assuming that the concession would have been only three-quarters, that, deducted from the 1.94, as shown above, would have netted the seller *only* 1.19. Just before the stock was awarded, quotations of a small amount might have been made at three to three and a half, as stated by the Secretary; but deducting the interest from the stock which the three and a half included, and the one-eighth commission, would have reduced the premium to about 2.95. Again, by reference to the bids for the loan, it will be seen that for the $3,000,000 awarded us the average bid below our offer was only 1.71, and that premium, but not 2.89, would have yielded a handsome profit to the holder. These are facts which the Secretary seems not to have known in his desire to protect our reputation, or if known, not to have shown. Hence our remark that no sane man would have bid 2.89 premium, with these facts staring him in the face, *for three millions of the stock*, had not the privilege of depositing in San Francisco been given in the proposals.

Now, we were not actuated by the market price to make our bid. It was solely in reference to the right, under the *notice*, to deposit at San Francisco. That would have been profitable to us. The Secretary having denied us this right, and thereby prevented the execution of our contract by the 15th of March, we were consequently exposed to a depreciated market, and that again affected our ability to fulfil the contract after the day stated in the notice.

All these consequences resulted directly from this violation of the contract, and the refusal to give authority to us to deposit at San Francisco by the 15th March. Such directions are proved to have been necessary by the official letter of the Secretary, written to us on the 17th of August last, (K in memorial, and before alluded to,) in which he stated "that, agreeably to your request, I have directed the depositary at Mobile to accept $100,000 on account of your bid for the loan. As New Orleans is one of the places of deposit on account of the loan specified in the official return, there is no occasion for instructions to the assistant treasurer, as he will doubtless receive any such sums, and grant the usual certificates of deposit." Here, then, he admits that the assistant treasurers not named in the proposals could not receive deposits and grant certificates without special instructions from his department, thus clearly showing that we could not have deposited at San Francisco without special instructions. Then why did he not grant us such instructions, which we requested him to do in our letter of January 29, 1859? For the reason that he undertook

this government brokerage by engaging in the sale of bills or drafts. By allowing us to deposit there, this would have been unnecessary; and on his part he censures us because we desired to engage in the same transactions. This would have been the result of no improper speculation by us, but the result of a fair business transaction, growing out of our legal rights under the proposals as accepted bidders. We asked or desired no aid of or facilities from the government to effect it. It would have interfered with the rights of no bidders, and would have intrenched on no man's immunities, and therefore the homily of the Secretary on speculators in exchange and government stock is entirely inappropriate and out of place.

But why should he become the guardian of either bill or stockholders? When he had issued the stock, he had no more right to control the action of the holder than he had to interfere with the proprietor of any other article, whether it was a bale of cotton or a hogshead of tobacco. But the Secretary should beware how he utters his abhorrence against speculators in exchange. Why did the Secretary issue proposals for bidders for the stock? To cause competition, so that he might get the best price. Was not this speculation? Then why does he rebuke us as its owners for the desire to profit by its sale? His proposals entitled us to pay at San Francisco, and incidentally gain by bills of exchange. This we should have effected (*as he did*) without any government facilities or aid. His precepts are better than his practice. His contract with Wells, Fargo & Co. shows that he does not estimate it as unbecoming in a high functionary of the government, and surely he ought to have some commiseration for bankers, whose vocation it is to realize a profit from similar operations. Especially should he be so, for if he can sell such drafts to them, he can to others, and thus carry on the business, and such drafts would become a *circulating medium*, as much so as a banker's ten-dollar bill. New books of entries must be kept to show his profits. This was to be a part of the revenue, raised, too, without the authority of law; on the contrary, in violation of law, and how could it be drawn out of the treasury? Indeed, the sale and purchase of such drafts have been prohibited by the sub-treasury law, in order to prevent a government paper currency in lieu of gold and silver.

Neither can the excuse assigned for this official government brokerage justify the act, on the ground that his predecessors have transgressed against the edicts of the law in the same way; and such a plea is rather inappropriate when addressed to a judiciary committee of the Senate, whose province it is to provide for the courts such legislation as may afford a faithful and exact execution of its laws. It would be more creditable to a high officer of the government to reform official abuses rather than perpetuate them by his own sanction and action. We should not have indulged in this strain of remark, but from the evident design and purpose of the Secretary to create a prejudice against our claim by his collateral denunciations against the legitimate business of bankers who deal in exchange.

Last of all, we now invite your attention to our position, and the damage that was caused by the direct violation of the contract on the part of the Secretary. His refusal to receive the money at San Fran-

cisco prevented its execution elsewhere by the 15th of March. We were ready to complete it then, but were not allowed to do so. We had $30,000 at stake. The refusal of the Secretary compelled us to pay up at other places or forfeit this amount. To save it we had to demand an extension of time beyond the 15th of March, and were accordingly coerced to dispose of the stock at great loss, to make other arrangements to pay at other depositories. All this was produced by the repudiation of our contract by the Secretary.

We never acquiesced in this wrongful denial or illegal act of the Secretary, and the solicitation of an extension of the day of payment was never intended to and cannot be taken to be a release of the government from the consequences. No such wrong can sanction the injury we have sustained by this illegal proceeding of the department. We should, if permitted by the Secretary, have paid the whole amount by the 15th of March—had, as you see, negotiated with Duncan, Sherman & Co., capitalists, to enable us to do so. This would have fully discharged our contract to the government. Then we should have got certificates of payment from the sub-treasurer there. These would have been the evidence of our title to the stock. Such we could have presented at any time after their issue to the department, as no day was required for their presentation. Such would have been our title to the stock, and no delay could have released the department from its obligation to issue the stock whenever we desired.

We, finally, ask your calm and dispassionate consideration of this statement of our case, confidently believing that, as a committee of the Senate of the United States charged with the responsible duty of guarding the citizens of the country from all wrongful acts, a disregard of its laws, or a breach of governmental obligations on the part of its functionaries, however influential or exalted, you will, if convinced of the justice of our claim, unhesitatingly afford us the relief which the case, as we earnestly believe, demands from the legislation of the country; and you cannot forget also that the Secretary now holds the deposit of the one per cent. of the loan not paid up, all of which lamentable results have been caused by his refusal, when requested by us, to give his authority to the assistant treasurer at San Francisco to receive payment at that depository, and which was absolutely necessary to enable us to do so, as is shown by his own official letter to us of the 17th of August, (marked K,) in our memorial, and fully set forth in this, our reply. We will at such times as you may direct, submit an account of the loss we have sustained by this unlawful proceeding of the Secretary, accompanied with the proper vouchers, and appeal to your just consideration for the allowance of our claim.

Very respectfully,

SWEENY, RITTENHOUSE, FANT & CO.

OFFICE OF DUNCAN, SHERMAN & CO., BANKERS,
New York, January 28, 1860.

GENTLEMEN: Subjoined we give you quotations of actual sales of United States 5 per cent. bonds of 1874, during February, 1859, which furnish some data for a reply to your inquiry.

Although it is not possible to state *precisely* the price at which three millions could have been disposed of at that time, our impression, however, is that a concession of one-half to one per cent. from the average price current during that month would have made a ready market for that amount. The present market value is one-quarter to one-half premium, but it would not be possible to place three millions at such rates.

Your obedient servants,

DUNCAN, SHERMAN & CO.

Messrs. SWEENY, RITTENHOUSE, FANT & Co.,
Washington, D. C.

Feb'y	1,	$10,000	sold at	102¾	Feb'y —,	$10,000	sold at	102⅝
	2,	90,000	"	102⅝	12,	25,000	"	102¾
	4,	30,000	"	102⅝	16,	10,000	"	102¾
	5,	10,000	"	102⅝	17,	25,000	"	102¾
	7,	35,000	"	102 ⅝	21,	80,000	"	102⅝
	8,	10,000	"	102 ⅝	24,	100,000	"	102¾
	9,	5,000	"	102 ¾				

By the courtesy of the Committee on the Judiciary of the United States Senate and its respected chairman, which we gratefully recognize, we have been furnished by the clerk of said committee the following copy of a report made by the Hon. Howell Cobb, Secretary of the Treasury, which we have printed, in connexion with our answer thereto, for the more convenient perusal of the members of the said committee.

SWEENY, RITTENHOUSE, FANT & CO.

TREASURY DEPARTMENT, *January* 21, 1860.

SIR: I have the honor to acknowledge your letter of the 17th instant, with the memorial of Messrs. Sweeny, Rittenhouse, Fant & Co., claiming indemnity for an alleged breach of contract made by this department with them, and, in compliance with your request, submit the following statement of the facts in regard to that claim as set forth. On the 17th December, 1858, this department issued the following official notice:

TREASURY DEPARTMENT, *December* 17, 1858.

Sealed proposals will be received at this department until 12 o'clock noon of Monday, the 24th of January next, for ten millions of stock of the United States, to be issued under the act of 14th June, 1858. Said stock will be reimbursible in fifteen years from the 1st of January next, and bear interest at five per centum per annum, payable semi-annually on the first days of January and July of each year; no bid will be received below par, and none for any fraction of one thousand dollars; no bid will be considered unless one per centum of the amount is deposited, subject to the order of the Secretary of the Treasury, with a depositary of the United States, whose

certificate of the same must accompany the bid. In all cases the bids must be unconditional, and without reference to the bids of others, and must state the premium offered therein.

The sealed proposals should be endorsed on the outside of the envelope "Proposals for loan of 1858," and be addressed to the Secretary of the Treasury, Washington, D. C. The sums which may be accepted from any bidder will be required to be paid to the depositary of the United States nearest to his residence, or indicated as most convenient by him. Should bids be accepted from parties not residing within the United States, they will be required to deposit the principal and premium with the assistant treasurer at Boston, New York, Philadelphia, or New Orleans. Certificates of stock for sums of one thousand dollars each, payable to the successful bidders or bearer, with coupons of semi-annual interest from the 1st of July next, also payable to bearer, attached thereto, will be issued for the amount of the accepted bids upon the certificate of deposit to the credit of the Treasurer of the United States with the depositaries of the United States. The stock will, in all cases, bear interest from the date of such deposit. The interest from that date to the 1st July next will be paid to the successful bidder, or his attorney, by the depositary where the deposit was made. Successful bidders will be required to deposit the principal and premium of their accepted bids on or before the 15th of March next. The preliminary deposit of one per cent. will be immediately directed to be returned to the unsuccessful bidders.

HOWELL COBB,
Secretary of the Treasury.

Under this notice offers were received within the period prescribed, amounting to $22,979,000, at various rates, from 4 to $5\frac{3}{100}$ per cent. premium. The bidders for $10,000,000 at the highest rates of premium were of course entitled to receive the stock under the notice; among these, Messrs. Sweeny, Rittenhouse, Fant & Co., whose offer was as follows:

BANKING-HOUSE OF SWEENY, RITTENHOUSE, FANT & CO.,
Washington, D. C., January 24, 1859.

SIR: We propose to take three million dollars ($3,000,000) of the stock of the United States to be issued under act of 14th June, 1858, at a premium of $2 89, ($102 89.)

We are, very respectfully, your obedient servants,
SWEENY, RITTENHOUSE, FANT & CO.

Hon. HOWELL COBB,
Secretary of the Treasury.

This bid was accepted under the notice, of which they were informed by the following letter from the department:

TREASURY DEPARTMENT, *January* 25, 1859.

GENTLEMEN: Your offer of $3,000,000 at the premium of $2\frac{89}{100}$ per cent. is accepted under the notice of the 17th ultimo for the loan.

Your certificate of preliminary deposit is sent to the Treasurer, and may be included in your deposit of principal and interest to complete the amount. Should you regard it as an advantage to receive with the certificates of stock coupons, with interest from the 1st instant, they will be so issued, on your depositing the amount of interest from the 1st instant to the date of the deposit of the principal.

Very respectfully, your obedient servant,

H. COBB,
Secretary of the Treasury.

Messrs. Sweeny, Rittenhouse, Fant & Co.,
Washington.

On the 29th of January, 1859, the following letter was received here:

Banking-house of Sweeny, Rittenhouse, Fant & Co.,
Washington, D. C., January 29, 1859.

Sir: It may suit the convenience of the government, as well as our own, were we to deposit at San Francisco, California, a portion of the money for the portion of the recent loan taken by us.

We respectfully ask your authority to deposit the money, or a portion of it, at that point, should the government require funds there.

We are, with great respect, your obedient servants,

SWEENY, RITTENHOUSE, FANT & CO.

Hon. Howell Cobb,
Secretary of the Treasury.

To which inquiry the following answer was returned on the same day:

Treasury Department, *January* 29, 1859.

Gentlemen: In reply to your inquiry of this date, I beg to state that the department does not require funds to be deposited with the assistant treasurer at San Francisco on account of the loan, and of course cannot give the authority requested in your letter.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Messrs. Sweeny, Rittenhouse, Fant & Co.,
Washington.

I beg leave to ask your attention to the terms of this letter from Sweeny, Rittenhouse, Fant & Co., of 29th January last, as containing no allusion to any claim or right to deposit at San Francisco within the notice, but merely asks, as a matter of accommodation, to deposit there within an indefinite period, and was answered accordingly on the same day, rejecting the proposition.

The notice under which the bid of Sweeny, Rittenhouse, Fant & Co. was accepted provides that successful bidders shall deposit the principal and premium of their accepted bids on or before the 15th of March then next.

The foregoing embraces all the facts relating to the offer of Sweeny, Rittenhouse, Fant & Co. known to this department previous to that date, when the whole amount was made payable by the terms of the proposals contained in the notice.

In the second paragraph of the printed memorial it is alleged by Sweeny, Rittenhouse, Fant & Co., that they offered immediately, after their bid was accepted in January last, by Mr. Fant, one of their firm, to deposit the whole amount that had been awarded to them in the depository of the United States at San Francisco, California.

This alleged offer to deposit within the terms of the notice constitutes the sole foundation for the claim to indemnity stated and argued in the memorial. The fundamental inquiry, therefore, is, when was this offer made, and what were its terms?

Upon this vital point this department has no knowledge or information beyond the assertion contained in the memorial. No such offer was made by Mr. Fant or any other person in behalf of Sweeny, Rittenhouse, Fant & Co. previous to the period when the bids were payable, under the notice, within the recollection or knowledge of any officer of this department.

If Mr. Fant came hither for the purpose of informal inquiry, a conversation upon that or any other subject of official business, he was undoubtedly informed, as is invariably the course when questions are to be presented for the consideration and decision of this department, that the proposition to be decided must be presented in writing for preservation, with the decision thereon, in the files of the department. Possibly in some vague conversation on the subject of the bid in question, the previous decisions of the department in regard to deposits proposed to be made by other bidders at San Francisco may have been mentioned; but personally I have no recollection of any conversation with Mr. Fant, or any other member of the firm of Sweeny, Rittenhouse, Fant & Co., previous to the period when the bids for the loan were payable by the terms of the notice, in which any claim of right to deposit in San Francisco under their bid was made or alluded to in any manner whatever.

The assertion of astonishment and amazement at the repudiation of the terms of the contract by a decision of this department, stated in the third paragraph, with the ingenious arguments throughout the memorial, upon the consequences of such alleged breach of faith, are therefore wholly destitute of foundation, no such question having been presented by Sweeny, Rittenhouse, Fant & Co., or in their behalf, to this department for decision, before the amount of their bid was payable by the terms of the notice. Of course no such decision could have been made. Your letter requests a statement of the objections which exist to the indemnity claimed by Sweeny, Rittenhouse, Fant & Co. This claim rests exclusively upon their alleged offer to deposit the amount of their bid at San Francisco within the time prescribed by the notice, and the alleged decision of this department rejecting such offer. As this offer and its rejection are explicitly and directly denied by this department, further objections to the claim would seem to be unnecessary until some specific evidence of the facts shall be produced or pointed out. An offer made in performance of

a contract, or in discharge of an obligation, must be a definite act, free from doubt or ambiguity. A decision of this department is an official transaction, invariably preserved on its files and records.

There are, however, some collateral circumstances bearing upon this subject to which I ask leave to request your attention.

Among these the terms of their letter of 29th January last may be suggested. Whether the alleged offer as made by Mr. Fant, on which the claim to indemnity is founded is supposed to have occurred before the date of that letter, or afterwards, is unknown here. If made before that letter was addressed to this department, asking for accommodation to enable them to deposit at San Francisco, it might be expected to refer to such formal offer under their right to deposit at that point, and its rejection by this department. It will be found to contain not the slightest allusion to such right. It is a mere request for authority to make deposits there at their convenience. On the other hand, if such offer was made after my explicit refusal to grant the indefinite accommodation requested, it would seem extraordinary that such an assertion of right as is now claimed to have been made was not presented in writing. No intimation or assertion of such right was made known here until the 26th of September last, when there had been deposited at New York, and this city, on account of the bid of Sweeny, Rittenhouse, Fant & Co., and by their authority the sum of $1,830,000 of principal, besides the premium thereon, and the price of the stock had declined in the market.

Had Sweeny, Rittenhouse, Fant & Co., in making their offer, contemplated and arranged for depositing the amount in California, as stated in their memorial, I am not aware of any occasion for an application to this department for authority or instructions to the depositary to accept such deposit, if tendered to him within the period prescribed by the notice. Special orders from the Secretary of the Treasury are not required to enable the Treasurer of the United States, or any assistant treasurer or other depositary, to receive lawful coin from any person acknowledging an obligation to pay money to the United States, or who desires to pay money into the treasury, upon any account whatever. It is the standing duty of such officers to receive such payments, and grant their certificates of the fact, the application of such moneys to their lawful objects being a subsequent question. It occasionally happens that for the purpose of obviating such questions parties apply here beforehand for specific directions to depositaries to accept moneys for particular accounts, especially where payment is proposed to be made at a depository where large transactions are not frequent and familiar. Such directions are usually given as a matter of course when specially applied for, if no objection appears. But in all cases the department has declined to give directions in advance to the assistant treasurer at San Francisco to receive deposits on account of either instalment of the loan, for reasons which will be presently shown; parties desiring to make payments there were invariably referred to their legal rights. Had Sweeny, Rittenhouse, Fant & Co. made their bid for the loan with the purpose of paying the amount at San Francisco, nothing has been done by this department to defeat their arrangements. If they had made their

deposits with the assistant treasurer there, or had offered him for deposit the whole amount of their bid on or before the 15th of March, the case would have been presented in a different aspect. But if such deposit at San Francisco had not been completed on or before the 15th March, it might, and probably would, have been rejected and returned by the department, as not within their contract with this department.

This department is not aware of any offer made by Sweeny, Rittenhouse, Fant & Co. to make any payment whatever on account of their bid for the loan at San Francisco, except at their convenience, according to the tenor of their letter of 29th January. Any such arrangement by this department for the convenience of bidders for the loan, in order that they might derive profit from the rate of exchange between San Francisco and New York, was prevented by the public interest. This department had previously entered into an arrangement with responsible parties to furnish all the money beyond the ordinary receipts which might be required for the public service there, in exchange for transfer drafts on New York, paying into the treasury $\$2\frac{30}{100}$ per cent. premium on the amount of such drafts. This arrangement is referred to by Messrs. Wells, Fargo & Co. in exhibit marked G, annexed to the memorial.

This department has for a series of years past annually made such contracts. That which had expired by its own limitation when the one referred to by Messrs. Wells, Fargo & Co. was entered into was for a premium of $\$2\frac{25}{100}$ per cent. Some of the other exhibits annexed to the memorial state the premiums paid at San Francisco for drafts on New York at $2\frac{1}{2}$ to 3 per cent. The premium offered by Sweeny, Rittenhouse, Fant & Co. upon their bid of three millions of dollars of the loan was $\$2\frac{89}{100}$ per cent. Deducting from this rate the premium actually realized at the time by the treasury on its transfer drafts, being $\$2\frac{30}{100}$ per cent., it is obvious that by giving them time to place money at their convenience in San Francisco to be realized from the sale of drafts there on New York, the actual premium paid by them upon their bid for the loan would have been reduced to $\frac{59}{100}$ per cent. Now had this department granted the facilities for placing money in San Francisco asked for by Sweeny, Rittenhouse, Fant & Co. in their letter of 29th January, it would, upon the statements of their memorial, enable them to reduce the premium on their bid to that extent, and would have been a fraud practiced upon all the bidders for the loan above that rate of premium whose offers were rejected. The amount offered at rates of premium below the accepted rates and above $\frac{59}{100}$ per cent. was $9,999 000. Of this sum $3,000,000 should have been awarded to the highest offers among the rejected bids, and withheld from Sweeny, Rittenhouse, Fant & Co., had the principles contended for in their memorial been adopted by this department. If, however, the right to select the place of payment and the time of making the payment, so that accepted bidders might at their convenience sell drafts on New York at San Francisco, and deposit the proceeds at the latter place, were secured to bidders by the contract, according to the statements and arguments of the memorial, it is certain that a premium of one per cent. for stock for which payments should be made to a depositary

on the Atlantic seaboard would be actually a higher rate of premium than three per cent. for stock paid at San Francisco. Under this state of things, it was clearly the public duty of this department to furnish no special facilities for making payments on account of the loan at that point. The right of making payments there within the terms of the notice is a question that has not arisen in this case, as Sweeny, Rittenhouse, Fant & Co. have made no tender of payment to the assistant treasurer there on that account. Under both instalments of the loan, to prevent undue advantages from speculations in exchange, this department has in all cases refused to extend the time of payment, or afford other facilities for making payments there; and if the various parties who have been so refused are entitled to indemnity, this department has mistaken its duty to the public interest.

On or before the 15th March last, when the time required by the notice expired, Sweeny, Rittenhouse, Fant & Co. had deposited with the assistant treasurer at New York an amount of their accepted bid for principal, $1,550,000, and the stock had been issued to their assignees accordingly. Previous to that time, Mr. Fant had applied to me in behalf of Sweeny, Rittenhouse, Fant & Co., verbally, requesting an extension of the period for making deposits under their accepted bid. He was apprized in the conversation held with him on that subject, that the department could not officially change the terms of the notice, which required all payments on account of the loan to be completed on or before 15th March, but I would informally consent to waive the enforcement of payment until the public service should need the money. I have no recollection or belief that in any such conversation Mr. Fant ever claimed or alluded to any right on the part of Sweeny, Rittenhouse, Fant & Co. to make deposits on account of the loan at San Francisco, but I recollect his requesting me to grant, as a favor and convenience, the privilege of making deposits at that point; which favor, in common with others who had asked the same favor, I felt myself bound to refuse.

Between 15th March and 26th September last there were deposited on account of the bid of Sweeny, Rittenhouse, Fant & Co., $280,000, and stock for that amount issued accordingly. During this period they had been called on informally to make payments on account of their bid, as the wants of the public service required. At the latter date, after so long an indulgence beyond the time originally stipulated for all payments on account of the loan, Messrs. Sweeny, Rittenhouse, Fant & Co., on being urged to make further payments, alluded, for the first time, according to my recollection, to the right set forth in their memorial, in the following letter:

WASHINGTON, *September* 26, 1859.

SIR: It is with great reluctance that we are compelled to address you in relation to the loan of three millions that was awarded to us in January last. Shortly after this contract was concluded, our Mr. Fant apprised you of our desire to deposit the amount in San Francisco, California. The advantage to us of such a deposit would have been very considerable; but this offer did not meet your approval, and was, at much cost and sacrifice to our house, then given up.

After a little delay we understood that the Secretary of War would require a large amount of funds to meet the disbursements to the troops stationed on the Pacific, and we again appealed to you and made known our readiness to fulfil our agreement by depositing the money at San Francisco. This you again declined, although the Secretary of War, we believe, sanctioned such a course. Anxious as we were at that time to execute our agreement in a way agreeable to yourself, yet we were constrained to consider your decision as repugnant to our rights, under the contract, and we have suffered accordingly a very serious loss in the operation. It is unnecessary for us to advert to the long chain of events that have contributed to depreciate the value of these securities.

Suffice it to say, that the war which has just closed, and the events that preceded it, so greatly shocked the financial state of the world as to impair the confidence of capitalists in the value of all public stocks. Under all these adverse circumstances, at much pecuniary cost, and with the most harassing vexations, we have succeeded in depositing on account of the loan some $1,930,000. Permit us then to say, that if you will advert to the terms of the printed proposals for the loan, dated December 17, 1858, you will find these liberal conditions: "The sums which may be accepted from any bidder will be required to be paid to the depositary of the United States nearest to his residence, or indicated as most convenient to him." Successful bidders not living in the United States were required alone "to deposit the principal and premium with the assistant treasurers at Boston, New York, Philadelphia, or New Orleans." When these terms were issued by you they were, of course, made in good faith, and you never could have designed that the time fixed for the deposit by the successful bidder in these proposals, to wit, the 15th day of March last, could be construed as in any way affecting, much less annulling, the previous right granted to the resident bidder to deposit at a place "*indicated as most convenient* by him." This was an essential part of the contract, and entered largely into the considerations which induced us to offer the premium we did. Such a bidder had the right to indicate the place of deposit. This is apparent, not only from the plain language used, but also the distinction made between the resident and non-resident bidder, the latter being by the contract bound to deposit his amount in one of the *named* depositories. Now, almost immediately after the closing of the bids, we indicated, through our Mr. Fant, our desire to deposit the amount at San Francisco. This right you did not accord to us; and fearing at the time that your decision might occasion us some trouble, especially as it was doubtful whether the certificate of the sub-treasurer of the fact of such deposit there made could reach you by the 15th March, we omitted to have the money deposited there before that day.

On the 7th February we again urged this desire through the Secretary of War, but this offer was not accepted. You can easily calculate the direct loss that has resulted to us by such a disappointment. The rates of exchange between New York and San Francisco will show that it would have been a saving to us of more than $90,000. By our bid the government avoided a large loss on its stock, as we can

show. The deposit at San Francisco, thus beneficial to us, would, in consequence of the disbursements required for the troops in the Pacific, have been of no disadvantage to the government. We have thus narrated truthfully the history of our proceedings in this case, to enable you to see that we have heretofore, as we sincerely think, only sought what the terms of your printed proposals gave us, and also to explain to you how your not having recognized this right has frustrated thus far all our calculations of gain; nay, how it has overwhelmed us with the loss of a large amount of money.

Now, sir, there is a balance due of $1,070,000 yet to be deposited by us in one of the depositories of the government. We still think that the terms of the proposals give to us the choice of "*indicating*" the place of the deposit; and as we can discover no reason why we should not have the advantage of this election, and believing that you will assist us in carrying out this intention, and thereby enable us to reduce our loss on the balance of the loan to the lowest amount possible, we trust that this desire may receive your considerate support.

If, upon a full review of the law and the facts we have stated, you are unwilling to reverse your decision, may we ask, if there exists a doubt in your mind, that you will refer the question to the Attorney General.

We have the honor to be, very respectfully, your obedient servants,

SWEENY, RITTENHOUSE, FANT & CO.

Hon. HOWELL COBB,
Secretary of the Treasury.

To this letter the following answer was returned on the same day:

TREASURY DEPARTMENT, *September* 26, 1859.

GENTLEMEN: In view of your letter of this date, I beg leave to state that the question whether bidders for the loan of 1858 were entitled, under the proposals, to deposit with the assistant treasurer at San Francisco has been repeatedly presented and decided by this department. Soon after the offers for the first instalment were awarded, the financial articles in the New York papers referring to the accepted bids specified that of Messrs. Howland & Aspinwall as affording a large profit from their facilities in making deposits at San Francisco, which it was understood they intended to do, under the terms of the proposals to which you refer.

I herewith enclose a copy of my letter to them of the 17th of August, 1858, which explains the grounds why they and others, who had made similar applications to deposit smaller sums, had no such right.

The phraseology of the proposals being the same in regard to places of deposit, the same reasons apply to your claim to deposit at that place, the difference being that deposits for the first instalments were required by the proposals to be made by 1st September, 1858, and for the second instalment by the 15th March, 1859.

As the claim of Messrs. Howland & Aspinwall to deposit at San Francisco obtained much notoriety in financial circles at the time, it was presumed that all bidders for the second instalment were aware

that no speculation in exchange could be made by deposits there. It is therefore impossible for this department to recognize that the proposals issued for the loan gave you any right whatever to deposit at San Francisco after the 15th of March, when all offers for the loan became payable by the express terms of the proposals.

With every desire to extend to you all the accommodation in my power, consistently with the public service, in regard to the payment due from you on account of the accepted offer for the loan, as due provision has been made for the required funds in California, it is impossible to accede to your request to deposit there.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

The following is a copy of the letter to Howland & Aspinwall, referred to in the above:

TREASURY DEPARTMENT, *August* 17, 1858.

GENTLEMEN: Your letter of the 16th instant is received, with certificates of deposit with the assistant treasurer at New York of $22,350 on account of premium on your accepted offer for the loan.

In regard to your indication that it will be most convenient for you to deposit the principal, $450,000, with the assistant treasurer at San Francisco between now and the 1st of January next, I must take leave to state that other parties have proposed to deposit at San Francisco on account of their offers for the loan, and this department has decided to refuse to accept any deposit at that place on that account. I must therefore decline your proposition to deposit there. I shall be happy to accommodate you, as far as the public service will permit, as to the time of making deposits on account of your offer with any of the depositaries in the Atlantic States, but must hold the bidders for the loan to the terms of the notice, in regard to any deposit at San Francisco, which was, in effect, excluded by the requirement that all successful bidders must deposit the whole amount on or before the 1st of September.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

MESSRS. HOWLAND & ASPINWALL,
New York.

It is apparent that had Sweeny, Rittenhouse, Fant & Co. been required to deposit the principal and premium of their accepted offer on or before the 15th of March last, agreeably to the express terms of the notice, their claim for indemnity set forth in their memorial would not have been made, as their condition would have been precisely similar to other bidders, who desired to avail themselves of the profits of the exchange between San Francisco and New York, but were refused the delay and facilities necessary for that purpose. Sweeny, Rittenhouse, Fant & Co. have therefore the opportunity of making this claim only by the indulgence in making their payments asked for by them and

accorded to them by this department. Whether their failure to comply with their engagements places them on more favorable grounds than those bidders for the first and second instalments who desired delay to enable them to deposit in San Francisco, but, being refused, complied with the notice in making their deposits at New York and other points on the Atlantic frontier, is a question which I forbear to discuss.

Several statements of alleged facts made by Sweeny, Rittenhouse, Fant & Co., in their letter of the 29th of September, as well as in their memorial, have not been noticed in detail, as they evidently have no bearing on the subject, and this department is compelled to make its communications as brief as possible.

But regard for the reputation of the bidders for large amounts of the loan at higher rates of premium than was offered by Sweeny, Rittenhouse, Fant & Co. impels me to notice the statement in their argument, transmitted in your letter, that no sane man would have bid $2 89 for a 5 per cent. stock that was selling considerably below that price in this country and in Europe. The prices of stocks of the United States can always be readily settled by reference to the price current published in the principal markets. It appears by the New York price current that the rates paid for the stock of this loan, issued for the first instalment of ten millions, was one hundred and four during the early part of January last. On the 24th of January, the day on which offers for an additional supply of ten millions of that stock were opened here, the quotation in the same price current is 103½. This obvious and flagrant mistake in regard to a fact so notorious as the current prices of the United States stocks at a given date is not material in regard to the claim for indemnity on the grounds stated by Sweeny, Rittenhouse, Fant & Co., but its correction seems proper to relieve their reputation, as well as that of several other bidders, who not merely offered higher rates of premium, but promptly paid them with the principal, from the imputation of having made insane and improvident contracts. So far from being such, the bid of Sweeny, Rittenhouse, Fant & Co., at the time it was made, evidently offered a fair prospect of profit. Had they been satisfied with the reasonable advance which they might have realized at once, there would have been no pretext for a claim of indemnity for what the course of events, equally beyond their control as that of the department, has proved, in consequence of their delay, to have become an unprofitable enterprise. The papers enclosed with your letter are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. J. A. BAYARD,
Chairman of Committee on the Judiciary,
Senate of the United States.